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Publications

CEPA Review:

Compilation of Comments on The Government Response

*"Environmental Protection Legislation Designed
for the Future - A Renewed CEPA"*

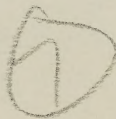
Volume 1
As of April 9, 1996

L'examen de la LCPE :

Compilation des commentaires sur la réponse du gouvernement

*"Mesures législatives sur la protection de
l'environnement conçues pour l'avenir - Une
LCPE renouvelée"*

Volume 1
en date du 9 avril 1996



Canada

For more information on CEPA,
please contact:

The CEPA Office
Environmental Protection Service
Environment Canada
OTTAWA, Ontario
K1A 0H3

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Pour obtenir plus d'information sur la LCPE,
veuillez communiquer avec:

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These comments appear in the
language of submission

Only comments relating directly to CEPA have
been included in these volumes. Questions
concerning any attachments or reports should be
sent directly to the submitter.

Les présents commentaires sont présentés dans la
langue dans laquelle ils nous ont été transmis. Seuls
les commentaires axés directement sur la LCPE ont
été inclus dans ces volumes. On devrait adresser à
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CEPA Review: Compilation of Comments on the Government Response

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Nickerson, M.W.	Palmer, Ann
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Northwatch * **	Pardy, Maureen

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Paull, John H.	Safe Sewage Committee
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Pesticide Action Group	Saskatchewan Government, Department of Agriculture and Food
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Reis, Gordon J.	Teichrib, Kelly
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Vanderwel, Francis

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Walker, May

Walker, Ryan

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Wilkins, Margaret

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Woelke, Ted

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World Wildlife Fund *

Young, Jennifer

Young, Raelene

Yukon Government, Department of Renewable Resources

Zinck, Joyce

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DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd-DCU-DOE
MAR 22 1996
REC'D-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Sergio Marchi

Address:

Box 202

Greenwood NS

BOP 1100

The Feminist Alliance

on New Reproductive and Genetic Technologies

March 18, 1996

The CEPA Office
Environmental Protection Service
Environment Canada
Ottawa, ON
K1A 0H3
Fax #: (819) 997-0449

RE: THE CEPA REVIEW

To Whom it May Concern

We are concerned that the Government's response to the recommendations of the Standing Committee on Environment and Sustainable Development in its Fifth Report, *It's About Our Health*, suggests a deregulatory impulse. It is our firm conviction that deregulating the biotechnology industry poses serious ecological and health risks and undermines Canada's environmental responsibility for current and future generations.

The CEPA review could fundamentally alter the way biotechnology is administered in Canada. CEPA currently regulates only the products not covered by other agencies or legislation by acting as a "safety net". According to the Canadian Institute for Environmental Law and Policy (CIELAP) "Instead of the current situation, in which CEPA applies to a product if a regulation requiring notification and assessment of potential toxicity has not been made under another act, CEPA would now only apply where there is no potential to make such a regulation under another act related to biotechnology". The revised CEPA would deal with all biotechnology products and set minimum notification and assessment standards covering those products already governed by other federal statutes or acts thereby weakening the "safety net". Unfortunately, the review raises many questions regarding the scope of the government's commitment to sustainability. The proposed changes fall short on several points:

1. No clear and precise assessment standards which permit the regulation of novel, risky, unpredictable and untested processes and products of biotechnology have been proposed. While the government identifies biotechnology as playing a role in pollution prevention, it does little to acknowledge the products of that industry as the causes of pollution. Moreover, minimum notification and assessment standards for biotechnology products do not constitute real environmental protection.
2. CEPA's role is rendered reactive, dealing only with the consequences of industrial biotechnology products. CEPA's assessment stops short of reviewing both the processes and products of biotechnology. Instead the

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Phone/Fax: (416) 537-4991

focus is exclusively on the products, ignoring the environmental implications of biotechnological processes leaving the Biotechnology industry essentially unregulated until the final phase of a product's release.

3. CEPA's assessment of the safety of biotech products will be weighed against their economic potential, leaving open the question of the future environmental costs of "genetic pollution". In the federal government's report, *It's About Our Health*, a new twist on the Precautionary Principle is proposed; namely that, "where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation". This differs from the conventional interpretation of this principle which advocates not proceeding with a particular action if there is reason to believe it might entail risk and shifting the burden of proof from the potential victim to the polluter. Although it favours a "science-based" approach to decision-making, the report clearly outlines a more "risk-based" approach which includes extrinsic economic considerations.

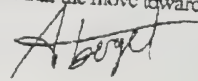
4. By narrowly conceiving the environmental impacts of biotechnology products in the framework of pollution by inert materials and toxic chemicals, the issues raised by biotechnology are obscured. The document speaks of "toxic substances" that can be identified and labelled, this conveniently leaves out the products and processes of biotechnology from being emphasized. Genetically Modified Organisms (GMOs), being alive and freely reproducing, pose a different kind of "risk" than the one covered in the report. The deliberate or accidental environmental release of GMOs introduces serious threats to sustainability and environmental protection in many unpredictable ways and for generations to come, namely by endangering natural biodiversity. Although the report does not specifically address biodiversity issues within national boundaries, it does briefly mention the potential risks associated with the "transboundary movement of live products of biotechnology" as part of its international commitment to the Convention on Biodiversity.

5. The tensions expressed between Environment Canada and Agriculture Canada in the area of biotechnology regulation undermine Agriculture Canada's responsibility towards a sustainable future and the safety of Canada's food supply. According to CIELAP "Agriculture Canada cannot simultaneously play the role of promoter and regulator of genetically altered plants, microorganisms and animals". The CEPA review would likely lead to the deregulation by Agriculture Canada of the field-testing of genetically altered organisms.

Finally, the federal government's efforts to pursue a policy of "promoting biotechnology as a green technology" has meant the reallocations of internal resources and a shift in spending from the regulation to the promotion of biotechnology as a competitive sector. This tendency towards deregulation is also expressed in efforts to discourage the mandatory labelling of genetically engineered foods.

We urge the government to abandon actions which weaken Canada's ability to protect the environment. We feel strongly that the CEPA review will irreversibly weaken our system of environmental protection and that the move towards deregulation threatens Canada's sustainability.

Sincerely



Elisabeth Aberget (for FANRGT)

0-1025-1
0-1165-36/s157

Dear Hon. Sergio Marchi:

We, the Acadia Environmental Society, are writing to you regarding your government's proposals for the regulation of biotechnology contained in its December 1995 response, Environmental Protection Legislation Designed for the Future, to the June 1995 report of the House of Commons Standing Committee on the Environment and Sustainable Development.

We are quite concerned that the government's proposal would seriously weaken the provisions of the existing Act as they apply to biotechnology. The minimum standards for minimum standards for notification and assessment for all products of biotechnology would be eliminated.

This proposal does not adhere to the recommendations regarding the regulation of biotechnology under CEPA, and could endanger the health, safety and environment of Canadians. It must be rejected.

A new biotechnology section should be established under the CEPA. This new section should:

- apply to all products of biotechnology which may enter the environment, including those which the government would have regulated under other acts.
- establish requirements for the assessment of biotechnology products in terms of their:
 - potential effects, either direct or indirect, on human health, the environment and biodiversity
 - potential of the effectiveness for their intended purposes and the availability of alternative means of achieving the same end-point with lower potential for health and environmental risk.
- provide for public participation in decision-making regarding biotechnology including:
 - public notice of significant decisions regarding biotechnology products
 - public notice of proposed field tests of biotechnology products
 - opportunities to appeal government decisions regarding biotechnology decisions, including approval of field tests and
 - enhanced access to information regarding products of biotechnology
- establish a full-cost recovery, user-pay system for approvals of biotechnology products and
- provide for the establishment of biotechnology in Canada.

We request that you take immediate action to address these concerns and to ensure that the health, safety and environment of all Canadians is protected from new biotechnology products.

Sincerely,


Beverly Olsen

representative of the Acadia Environmental Society

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Filed - DCU - DOE

MAR 21 1998

Filed - UCM - MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Judy Adams

Address: Box 1331

Middleton NS B0S 1P0



AgrEvo

A company of Hoechst and NOR-AM

The Honourable Sergio Marchi
Minister of Environment
Room 101-S, Centre Block
House of Commons
Ottawa, Ontario
K1A 0A6

Rec'd-DCU-DOE

MAR 27 1996

Regu-UCM-MDE

0-1025-1
0-1165-36/5157

March 20, 1996

039087

RE: CEPA Review: The Government Response

Dear Minister Marchi,

AgrEvo Canada Inc. appreciates the opportunity to comment on the Government Response to the CEPA Review. As a world-wide crop protection company based out of Berlin Germany, we see an exciting future in product development through plant biotechnology. Canada's leadership in the science of biotechnology has led AgrEvo to establish a basic research centre in Saskatoon, Saskatchewan from which we developed the first biotechnology derived commercial crop in Canada.

The establishment of a predictable regulatory climate is a key element in securing Canada's position as a world leader in the science of agricultural biotechnology. Biotechnology regulation must be responsive and effective, while maintaining the highest standards in protection of health of humans the environment. We feel, for the most part, that the Government Response supports such principles and would like to offer the following comments:

- We support a renewed CEPA continuing to work within the existing Federal Framework where products of biotechnology that fall under existing Acts of Parliament be regulated under these Acts. Agricultural products derived through biotechnology would therefore continue to be covered by *Seeds, Feeds, Fertilizers, Plant Protection, Health of Animals* and *Food and Drug Acts*.
- As mentioned in section 7.4, CEPA should act as a "safety net" for products which are clearly not covered by existing Acts and legislation. We do not support new legislation under CEPA for products which fall or potentially fall under other Acts as this will raise the opportunity for an additional or duplicative layer of regulation. As required, regulations in existing Acts can be modified to establish notification and assessment criteria.

- Under Section 7.4 we have concerns with the necessity that regulations be promulgated before notification and assessment be taken under another relevant Act. This approach will set the stage for delays and duplication. If it is clear that an Act covers a product, and published guidelines exist for notification and assessment under that Act, the product should be assessed under that Act.

In recent examples with plants with novel traits, adequate regulatory scrutiny did occur with guidelines under the Seeds Act and the Food and Drug Act. The necessity for promulgation of regulations, would have caused significant delays in commercial development without a corresponding added value in the safety assessment. Such a situation would have resulted in Canada being years behind in biotechnology development rather than being one of the world's leaders.

- We would like to emphasize that regulatory oversight through guidelines is the most effective way to administer regulatory requirements for products of biotechnology. The technology itself and how we understand it will evolve rapidly in the future. Using guidelines as the regulatory tool will best serve the flexibility required to deal with future notification and assessment needs. Entrenchment of regulatory requirements as regulations will create a system that cannot respond to the technology itself.

The current Federal Framework supports a stringent, well defined, predictable, efficient and defensible regulatory system for products of biotechnology. Canada's regulatory system has been developed in an open and consultative way and is recognized as a model internationally. Any deviation of this approach will call Canada's credibility into question and our leadership position will be compromised.

Agrevo Canada Inc. is committed to establishing a facility in Canada as a global centre of excellence for agricultural biotechnology research. The existing Federal Framework has been an important element in making this choice and we ask that our comments be considered in the development of a new CEPA.

Regards,



Conor Dobson
Manager, Government Affairs

copy: Honourable Ralph Goodale, Minister of Agriculture
Honourable John Manley, Minister of Industry

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DM95-LCC-0222

Rec'd - [illegible]

APR 1 1996

Reg-U [illegible]

March 22, 1996

Mr. Mel Cappe
Deputy Minister
Environment Canada
28th Floor, 10 Wellington Street
Terrasses de la Chaudière
Hull, Quebec
K1A 0H3

Dear Mr. Cappe:

We appreciated receiving a copy the report entitled *Environmental Protection Designed for the Future - A Renewed CEPA*. Following a thorough review of the document, we would like to offer the following comments on the proposed changes to the Canadian Environmental Protection Act.

I know that our officials have met on a number of occasions since the report was released. I also understand that the participating provincial and territorial representatives in the joint CEPA-FPAC/CCME-LRC group felt the meetings were worthwhile and appreciated the forthright and open discussions with your officials. As a result of the meetings, our respective representatives have a much better understanding of each others' concerns.

I was pleased to note that in a number of areas, the report has suggested approaches which made sense to all those who participated in the discussions. However, we are still concerned about the apparent reluctance of Environment Canada to recognize the role, responsibilities and authorities of the provincial and territorial governments. In particular we are concerned with the apparent intent of the federal government to rely on the increased use of bilateral agreements. We believe the Canadian Environmental Protection Act should instead incorporate the multilateral, national approach of the draft Environmental Management Framework Agreement. As you know, the

.../2

draft agreement was developed under the Efficiency of the Federation initiative announced by the First Ministers in December 1994. I know that my Minister has written to your Minister to express his deep concerns about these very important issues.

I would like to provide some specific comments on a number of areas. At the same time I expect your department will also address the other concerns which were raised by Alberta and the other provincial and territorial representatives at the discussion meetings held over the past months.

Specific Concerns

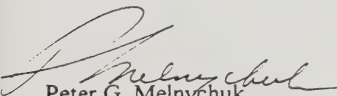
1. There are a number of areas where we believe the proposed changes to CEPA may overstep federal authority. Proposed mandatory pollution prevention plans and control of certain toxic substances are examples.
2. While there is a section in the report on non-regulatory approvals, the report tends to put an emphasis on the use of federal regulations. We would like to see more use of alternative mechanisms such as memoranda of understanding, market forces, or voluntary programs to achieve goals. An example of this would be the use of the Canadian General Standards Board to develop national fuel standards.
3. We believe that, if the new CEPA is adopted without sufficient attention to provincial concerns, there will be increased overlap and duplication. If the provinces will be relied on to deliver programs, a meaningful consensus mechanism for developing these programs must be established and provisions for reimbursement or increased federal transfer of funds must be included.
4. The pollution prevention principle was endorsed by all participants involved in developing the pollution prevention schedule for the draft Environmental Management Framework Agreement. There is, however, a concern with the proposal that Environment Canada be able to require a facility which is operating under provincial or territorial approvals to produce a pollution prevention plan for a toxic substance. It is imperative that any plan consider the total environmental performance of the plant and not just focus on a single toxic substance. There is also a need to ensure that the provincial and federal programs applicable to an enterprise do not overlap or duplicate each other. In our view, provincial environmental departments should play the leadership role in working with facilities to develop pollution prevention plans, should they be required.
5. In the area of international air pollution, we believe that any framework and timelines should be developed through federal/provincial consensus. In addition, as you are aware, it is also our view that the Government of Canada should not enter into any international agreements that affect areas of provincial jurisdiction unless affected provincial and territorial governments fully participate in the development and management of those

agreements. In many cases, provincial implementation is required to enable Canada to meet its international environmental obligations.

6. We note that the report includes the idea of replacing FPAC with a new National Advisory Committee. Given past concerns expressed about creating new environmental committees, consideration should be given to linking to or modifying one of the existing committees. As noted under Point 3, it is imperative that the provinces be represented as partners on any committee making decisions that affect provincial activities or resources.
7. We believe that, in providing Aboriginal peoples with authority to manage environmental matters on their land, great care must be taken to clearly enunciate the relationship among provincial law, Aboriginal authority and possible administrative or equivalency agreements.

We once again appreciate the opportunity to contribute to the CEPA review and look forward to continuing to work with your department.

Sincerely,



Peter G. Melnychuk
Deputy Minister

cc: Honourable Ty Lund,
Minister of Environmental Protection

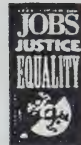
CCME DM Committee

Alberta Petroleum Industry
Government Environmental Committee



Alberta Federation of Labour

350, 10451 - 170 Street Edmonton, AB T5P 4T2 (403) 483-3021 FAX (403) 484-5928



Audrey M. Cormack
President

Les Steel
Secretary/Treasurer

March 19, 1996

139127

The Honourable Sergio Marchi
Minister of the Environment
Terrasses de la Chaudiere
10 Wellington Street
Hull, Quebec
K1A 0H3

Rec'd-DCU-DOE

MAR 28 1996

Recu-UCM-MDE

0-1025-31

Dear Sir:

Re: Canadian Environmental Protection Act (CEPA)

I am writing on behalf of the 110,000 members of the Alberta Federation of Labour, and their families, to express our concern with the proposed changes to the Canadian Environmental Protection Act (CEPA). Having reviewed your government's proposals, we have come to the conclusion that the changes fail to strengthen the Act in the areas of pollution prevention, regulation of toxic substances, access to information and environmental rights.

Working Albertans want to see a federal government that takes a strong leadership role in environmental protection by setting firm environmental standards, banning or phasing out the use and release of toxic chemicals that persist in the environment and build up in wildlife or humans, and by passing an Environmental Bill of Rights (which includes the right to intervene when the environment is being harmed; and to sue polluters who break the law).

We also believe the Canadian public should have the right to know who is releasing pollutants into our environment, through comprehensive public access to information. In addition we believe the regulation of biotechnology is essential for the protection of human health, safety and the environment, and that such protection should be part of a new, strengthened CEPA. Finally, we support the position that all sectors of society should be required to prevent the use and generation of pollutants rather than only working to control them. In our view, control of pollutants is nothing more than a time bomb waiting to go off.



We support the points in the joint submission to your government entitled "It Is Still About Our Health", most of which have been unanimously adopted as policy by our members.

Thank you in advance for your attention to this matter.

Yours truly,

A handwritten signature in cursive script, reading "Audrey M. Cormack". The signature is written in dark ink and is positioned above the printed name and title.

Audrey M. Cormack
President

GF*klm/opeiu #458

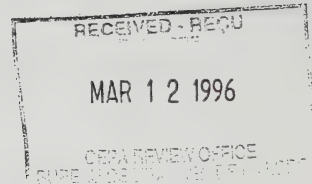
cc: Canadian Environmental Network (CEN)

file: \95-97sc\env\marchi

A L B E R T A
FOREST PRODUCTS
A S S O C I A T I O N

March 7, 1996

Ms. Ruth Wherry
Manager
CEPA Office
Environment Canada
15th Floor, Place Vincet Massey
Hull, Quebec
K1A 0H3



Dear Ms. Wherry:

Re: Environmental Protection Legislation Designed for the Future - A Renewed CEPA

Our organization, the Alberta Forest Products Association, is an industry association representing the interest of the forest products sector in Alberta. Our 64 member companies produce pulp and paper, lumber, panelboard and secondary manufactured products.

We recently reviewed the Federal Government's response to the recommendations of the Standing Committee on Environment and Sustainable Development entitled "*Environmental Protection Legislation Designed for the Future - A Renewed CEPA*". Unfortunately, we did not receive this document until shortly before the 90 day deadline for submission of comments, and have not had the opportunity to review it with our membership in detail.

We would like to comment on number of main points within this document:

- **"Pollution Prevention"**. Although it is well recognized that pollution prevention is at the pinnacle of environmental protection strategies, it should be recognized that it is not the only effective solution. Pollution control and treatment mechanisms and recycling are just two of the other options that offer a means for ensuring effective environmental protection. By placing so much emphasis on only one means of environmental control, other solutions that may be as effective, or more effective, may be overlooked.

.../2



- **“Jobs and Growth and “Good “ Regulation”** This section touches on the important issue of considering the potential economic impact of environmental regulations. It goes on to state that in many instances, “much of pollution can be a flaw in the production process and that environmental improvements can enhance competitiveness”. This later statement does not consider that, in most cases, the introduction of environmental improvements involve significant capital expenditures and can add to the overall cost of producing a product. This is not to say that our industry is adverse to improving environmental performance, only that it is naive to think that in the majority of cases, stricter environmental regulations and controls help with the global and domestic competitiveness of industry.
- **“ The Need for a Cooperative Approach”.** We were encouraged to see the emphasis on minimizing overlap and duplication within the document. As described in this document, without a constitutionally clear division of power between the levels of governments, programs aimed at the same goal are sometimes initiated at the Federal and Provincial levels. Recent effort have been made by organizations such as the Canadian Council of Ministers of the Environment (CCME), to help overcome this type of duplication and overlap.

I would like to thank you for the opportunity to provide input into the CEPA review process. Please keep us informed of further developments in this area.

Yours truly,



Neil Shelly, P.Eng.
Director, Environmental Affairs

NS/jcs

Alberta Treaty Nations Environmental Secretariat

P. O. Box 47051, 62 Edmonton Centre Post Office, Edmonton, Alberta, T5J 4N1

CANADIAN ENVIRONMENTAL PROTECTION ACT GOVERNMENT RESPONSE

REPLY TO THE MINISTER

February 2, 1996

Rec'd - DCU - DOE

137953

FEB 13 1996

Honourable Sergio Marchi
Minister of the Environment
House of Commons
Room 105-S, Centre Block
Parliament Buildings
Ottawa, Ontario
K1A 0A6

Regu - UOM - MDE

0-1025-1
0-1165-36/C8-4

Dear Honourable Marchi:

Before attending to the business at hand, we wish to offer our congratulations on your appointment as the new Minister of Environment Canada.

On behalf of the Alberta Treaty Nations Environmental Secretariat (ATNES), we are replying to correspondence received on the discussion paper entitled: "CEPA Review: The Government Response. Environmental Protection Legislation Designed for the Future - A Renewed CEPA, A Proposal." Your predecessor, the Honourable Sheila Copps, requested the advice of First Nations concerning committee participation for the CEPA National Advisory Committee, proposed to replace the former CEPA Federal-Provincial Advisory Committee.

ATNES is the working arm of the Alberta Treaty Nations Society for Environmental Protection, a non-profit society providing comprehensive environmental policy and technical assistance to Alberta First Nations. During the November 1995 Alberta Chiefs' Summit in Edmonton, ATNES was unanimously endorsed by the Chiefs of Alberta as their representative and point of first contact for environmental issues. ATNES takes its direction from the Chiefs who represent First Nations communities within Alberta, through the Treaty 6, 7 and 8 organizations. We have been delegated by our respective Treaty colleagues to provide guidance to ATNES.

We wish to advise you that for environmental issues in general, and the proposed CEPA National Advisory Committee in particular, ATNES is the sole representative for the First Nations of Alberta. ATNES has established good working relationships with the Alberta Regional Office of the Canadian Environmental Assessment Agency, and the Prairie and Northern Region Office of Environment Canada. We are currently formulating consultation protocols with your regional officials for the CEAA regulations, the Environmental Management Framework Agreement,

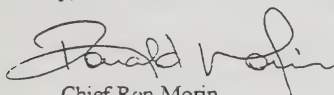
Page Two

Honourable Sergio Marchi

Biological Diversity and Endangered Species legislation. Participation on the CEPA National Advisory Committee would be an effective means to maintain the Alberta Chiefs' desire for ATNES to assist government to achieve comprehensive and cost-effective management of First Nations environmental issues.

Should you require additional information on ATNES, please contact our administrative officer, Michael Evans, in Edmonton at either the address above, or by phone at (403) 420-1919. Thank you for your attention.

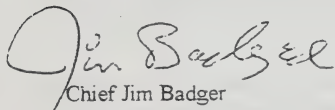
Sincerely,



Chief Ron Morin
Treaty Six



Chief Phillip Big Swan
Treaty Seven



Chief Jim Badger
Treaty Eight

cc: Honourable Ron Irwin
Indian and Northern Affairs Canada

Scott Serson, Deputy Minister
Environment Canada

Rec'd-DCU-DOE

MAR 12 1996

Regu-UCM-MDE



"Defending wild Alberta
through awareness and
action"

0-1025-1

March 11, 1996

Hon. Sergio Marchi
Minister, Environment Canada
Ottawa, ON

Dear Mr. Marchi:

RE: Proposals to Reform CEPA

It is with great concern that the Alberta Wilderness Association watches the proposals to reform Canada's primarily environmental health protection law, the Canadian Environmental Protection Act (CEPA).

One of the few things that Canadians agreed upon during the Charlottetown round of constitutional discussions was the need for a strong federal leadership role on environmental protection both in setting standards and enforcement. The provinces are incapable of policing themselves for the most part. We recommend the federal government to take a stronger role than it has in the past.

Persistent chemicals have been discussed for decades. We fail to see why these chemicals are not being phased out and banned outright.

We have long supported the need for an Environmental Bill of Rights. That need has not gone away. The public must have the tools to step in when the environment is being harmed and ensure that the law is enforced.

The public has a right to know and the government the responsibility to provide full access to all information regarding releases of pollutants into the environment.

The goal in Canada should be zero discharge of persistent and acutely toxic chemicals. We should be working towards zero discharge on other pollutants as well. Such technologies would help Canada further develop a leadership role in environmental industries around the world. We look forward to strengthening, not weakening, of CEPA.

Yours sincerely,

Cliff Wallis
Past-President

PHONE (403) 283-2025
BOX 6398 STATION D

FAX (403) 270-2743
CALGARY, ALBERTA T2P 2E1

Honorable Sergio Marchi
Ministry of the Environment

Rec'd-DCU-DOE

20 March, 1996

MAR 26 1996

0-1025-1
0-1165-36/5157

Dear Minister:

Reçu-UCM-MDE

139023

Reference review of the Canadian Environmental Protection Act

I agree that to be effective environmental protection must be the responsibility of all government departments and agencies which, presumably, is part of the reasoning behind the proposed amendments particularly with regard to delegating some responsibilities to Agriculture Natural Resources, Industry, and Health Canada. However, there is a need for central monitoring of departments and agencies with respect to CEPA and, to date, your proposals are weak in the extreme.

The task of monitoring the implementation and application of CEPA should go to the Commissioner for the Environment who should be an independent officer of Parliament. It is not good enough to have him subject to the Auditor-General. Such a Commissioner should operate under the authority of an Environmental Bill of Rights, independent of the government of the day and the on-going bureaucracy.

In specific areas of responsibility lead ministries such as Agriculture, Natural Resources, Industry and Health Canada should be required to consult and work cooperatively with Environment Canada since they cannot be trusted to protect the public interest on their own. To a greater or lesser extent these ministries have become captive to the industries they were set up not only to aid but also to regulate in the public interest. Too often they have defined the public interest as equating to private, corporate, interest.

In addition, again in the public interest, all departments and agencies should be required to get a sign-off on proposals from Health Canada as to the impact on human health of whatever is being proposed.

The easy way out of any difficulty is to avoid responsibility. This, apparently is what is being done by the current proposals to amend the CEPA. Particularly with respect to genetically engineered products, air pollution, and regulation of toxic substances by allocating to pro-industry departments primary responsibility in the areas noted.

Where is the protection of the public interest? The history of Natural Resources, Agriculture and Industry over the past 30/40 years does not inspire confidence. They have increasingly become captive to those they are supposed to regulate and monitor. In latter years the Health department has been acting in a similar manner.

The convenience of the bureaucracy; the convenience and/or profitability of commercial/industrial enterprises, the avoidance of government accountability should not be the decisive factors when it comes to environmental considerations. The environment is not just another thing to be considered when making a decision. It is pre-eminent. Without a healthy environment nothing else matters in the long run. We can survive quite well without a so-called 'modern' economy but we sure as hell cannot survive without a clean, healthy environment. There will be no economy nor society as we know it without a good, natural environment supporting them. The long term health and viability of Canada is what is at stake. (See attachment for a fuller description.)

We need an Environmental Bill of Rights and renewed emphasis on developing an international Charter of Environmental Rights through the United Nations.

We also need a clear constitutional statement of federal paramountcy with respect to environmental protection. Nature does not give a fig about artificial boundaries of any kind. In this regard I suggest the powers of assessment be exercised, as a general rule, as follows:

- if economic development cannot not be sustained over the long term it should not be permitted;
- if development is entirely within a Province that Province makes the assessment;
- if development encroaches upon another Province or Provinces, then they must be involved in a joint assessment
- if development has national or international implications then the Federal government must be involved
- in any assessment a global welfare approach must be taken

We need to emphasize the principles of: polluter pays; prevention; presumption of harm; precautionary; by assessing all proposals as to their sustainability over time and conservation of all natural resources both renewable and non-renewable.

We need to ban all "toxics" from the market place until they are proven safe to humans and other species. The use of those necessary to survival must be strictly controlled. And let's not have any pseudo-scientific, obfuscating nonsense about what is "toxic". There should be no "discretion" permitted with regard to such substances.

All the above could be covered adequately if the principle of "good stewardship" were promoted and enforced.

In short, to be effective the entire environmental assessment process must be universal, mandatory, and permeate all government decision-making. To help ensure this outcome a Commissioner for the Environment, responsible only to Parliament is required.

Central to effectiveness is recognition that the environment is holistic by nature and cannot be compartmentalized for the convenience of politicians, scientists, bureaucrats, commercial/industrial interests, or for that matter, environmentalists. It cannot be too strongly emphasized that "everything is connected to everything" and nature's environment does not recognize artificial boundaries of any kind.

All provisions of CEPA should be applicable to all departments and agencies of the Federal government and should be closely monitored and enforced. For this to happen will require considerable stiffening of the spines of politicians and bureaucrats. It also requires practicing an inter-disciplinary, inter-sectoral, inter-departmental, inter-jurisdictional approach to dealing with proposals and the imposition of prohibitive penalties, including making owners and CEO's responsible for the activities of their corporations and subjecting them to fines and jail.

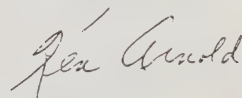
The basic question to be asked in all cases are: "Do we need what is being proposed?" "How will it enhance our lives?" "What is the effect upon other species?" Or will we continue to distress the majority in order to feed the egos and greed of a minority?

Ultimately it is the survival of mankind and many other species we are dealing with here.

A final question with respect to the proposed amended CEPA. Has adequate consideration been given to the cumulative effect of individual, specific proposals, in the same area of concern over time?

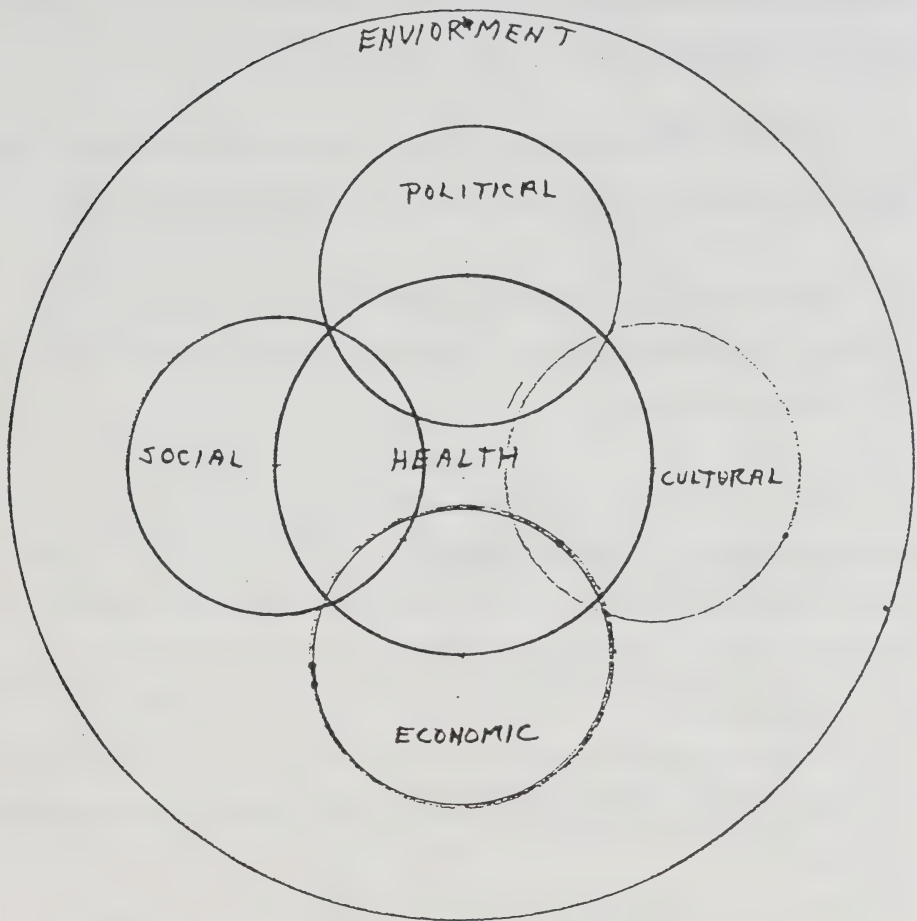
For your consideration.

Yours sincerely,



Ken Arnold

CONCEPTUAL MODEL FOR A HEALTHY SUSTAINABLE COMMUNITY



First and foremost, the environment is not one of many factors to be considered in decision-making. It is pre-eminent. Without a good environment there will be, ultimately, nothing else.

Everything is included in the environment. Think of it as the biosphere. If the general environment is not good then all the rest is of little, long term, value.

Health is an integral, fundamental, aspect of the total environment. It is pervasive throughout all components. It acts upon, and is acted upon, all other parts of the entire process of life.

Therefore, all planning should first consider if a proposal is environmentally sound and sustainable. If so it can proceed to evaluation from a social, cultural, economic and political perspective. This is the holistic, ecologically sustainable, development process. It is eco-system planning.

Reference the conceptual model. The parts shown are the main components of any community. Many more 'parts' can be identified and added to depict a particular community.

It is a two level presentation. Part one (shown) is at the elementary, introductory level. Part two is at the secondary, more detailed, level. It is being developed.



ASSOCIATION
DE L'INDUSTRIE
DE L'ALUMINIUM

1010 rue Sherbrooke Ouest, Bureau 1600 Montréal (Québec) Canada H3A 2R7
Téléphone: (514) 288-4842 • Télécopieur: (514) 288-0944

Rec'd - DCU - DOE

FEB 12 1996

137863

Le 2 février 1996

Reçu - UCM - MDE

L'Honorable Sergio Marchi
Ministre de l'Environnement
Gouvernement du Canada
Terrasses de la Chaudière - 28^e Étage
Hull (Québec)
K1A 0H3

L'Honorable David C. Dingwall
Ministre de la Santé
Gouvernement du Canada
Brooke Claxton Building - 16^e Étage
Tunney's Pasture
Ottawa (Ontario) K1A 0K9

0-1025-1
0-1165-36/s

Monsieur le Ministre de l'Environnement,
Monsieur le Ministre de la Santé,

Nous avons pris connaissance de la réponse du gouvernement portant sur l'examen de la Loi canadienne sur la protection de l'environnement (LPCE) et du document de consultation qui a été déposé à la Chambre des Communes le 14 décembre 1995.

Nous vous présentons en annexe nos commentaires sur la réponse du gouvernement aux recommandations du Comité permanent de l'environnement et du développement durable. Les commentaires se veulent constructifs et ils ont comme unique objectif l'amélioration de la qualité de l'environnement.

Comme vous pourrez le constater à la lecture de notre mémoire, nous croyons que cet objectif pourra être atteint d'autant plus facilement si les dédoublements et les chevauchements sont éliminés et si le concept d'un guichet unique est mis en place.

Si vous le souhaitez, nous sommes disposés à discuter plus en détail de notre vision de ce que devraient être les mesures législatives sur la protection de l'environnement.

Veuillez agréer, messieurs les Ministres, l'expression de nos sentiments distingués.

Christian L. Van Houtte
Président

CVH/ja

p.j.
lettre_marcudn.doc

COMMENTAIRES PORTANT SUR LA RÉPONSE DU GOUVERNEMENT
SUR LES MESURES LÉGISLATIVES SUR LA PROTECTION
DE L'ENVIRONNEMENT CONÇUES POUR L'AVENIR
- UNE L.C.P.E. RENOUVELÉE -

SOU MIS PAR
L'ASSOCIATION DE L'INDUSTRIE DE L'ALUMINIUM
FÉVRIER 1996

INTRODUCTION - Pages 2 à 6

La gestion de l'environnement dans un pays aussi vaste et aussi diversifié que le Canada par un organisme central est une utopie bien que nous reconnaissons « la nécessité d'une approche commune ». Nous ne croyons pas, comme l'indique le document à la page 4, que « le gouvernement fédéral joue un rôle majeur en gérant les problèmes environnementaux de la façon la plus efficace et rentable possible ». Les chevauchements et les sommes considérables consacrées à des études sans grande valeur scientifique effectuées par de trop nombreux consultants n'apportent rien à la qualité de l'environnement. Nous sommes d'avis qu'en matière d'environnement, le gouvernement fédéral devrait se limiter à émettre des orientations globales suite à des consultations avec les gouvernements provinciaux par l'intermédiaire du Conseil Canadien des Ministres de l'Environnement (CCME). Ces orientations seraient mieux adaptées et compatibles avec le milieu.

Tout au long du document, de nombreuses références sont faites pour une gestion partagée de l'environnement; toutefois, l'esprit des 91 pages de ce document reflète une toute autre réalité. Nous souhaitons, comme canadiens et comme gestionnaires, mettre fin aux chevauchements et dédoublements, et croyons fortement que les provinces sont les plus aptes à définir et à administrer une réglementation qui réponde aux réalités du milieu.

Compte tenu de ce qui précède, nous souscrivons à l'énoncé que des règlements mal conçus peuvent avoir des conséquences sur l'économie; tenter de faire à partir d'Ottawa une réglementation qui s'applique à toutes les conditions de notre vaste pays ne peut que mener à une réglementation mal conçue et non adaptée.

La réglementation environnementale doit reposer sur des bases scientifiques solides; puisque les entreprises possèdent d'importantes connaissances techniques, nous croyons qu'elles devraient être impliquées dès le début du processus de consultation. Malgré toute la bonne volonté, une réglementation « toute grandeur » ne peut conduire qu'à des incohérences. La quasi-totalité des conditions énumérées par le professeur Porter pour la création de règlements qui facilitent l'instauration de nouvelles technologies sont, selon nous, beaucoup plus réalisables quand elles sont développées et appliquées par des intervenants proches du milieu.

TROISIÈME PARTIE

CHAPITRE 1 - PRINCIPES DIRECTEURS D'UNE L.C.P.E. EFFICACE - Page 14

COOPÉRATION INTERGOUVERNEMENTALE - Page 16

Nous avons exposé plus haut notre position sur ce sujet : en conséquence, nous proposons que la recommandation 1.5 soit modifiée pour dire que le gouvernement du Canada continuera de laisser aux provinces, territoires et peuples autochtones le soin de régler les problèmes environnementaux actuels ou potentiels par la création d'un guichet unique. Ce guichet unique serait responsable de la collecte des données, de la diffusion de l'information et de l'application de la réglementation.

SCIENCE ET PRINCIPE DE LA PRUDENCE - Page 16

Les recommandations 1.6 et 1.7 nous laissent perplexes : individuellement, chacune des recommandations est fondée, mais il est fort probable que tout ce qui ne pourra pas être démontré scientifiquement serait banni selon le principe de la prudence. Il s'agirait de faire indirectement ce qui ne peut être fait directement. Le principe de la prudence n'est pas la solution à tous les risques. Une bonne gestion de risque est sûrement plus dynamique et constructive.

Bien que le concept de la prudence soit assez séduisant et relativement facile à « vendre », il comporte deux éléments dont il faut absolument tenir compte avant de l'accepter.

Tout d'abord, qui décidera s'il existe des « risques de dommages graves ou irréversibles »? Par quel mécanisme prendra-t-on cette décision? Quels seront les recours éventuels?

D'autre part, le concept de la démonstration de la négative doit être évalué. L'application aveugle du principe de la prudence conduit à demander que soit démontrée l'absence de risque, ce qui est fondamentalement impossible puisque cela impliquerait la connaissance absolue de tout.

La négation d'un effet ou d'un risque ne peut être prouvée

CHAPITRE 2 - ADMINISTRATION - Page 18

Nous souscrivons entièrement à l'énoncé qui stipule que « le gouvernement a pris l'engagement de collaborer étroitement avec les provinces afin d'atténuer les chevauchements ». Selon nous, la seule façon adéquate d'atteindre cet objectif est la création de guichets uniques en matière d'environnement et ces guichets doivent être près des citoyens et des utilisateurs. Malgré cet énoncé, l'esprit du document reflète le désir d'une plus grande centralisation au niveau du gouvernement fédéral, ce qui nous semble inapproprié.

Une collaboration plus étroite au Conseil Canadien des Ministres de l'Environnement (CCME) pourrait conduire à la création de guichets uniques.

ENTENTES ADMINISTRATIVES ET ENTENTES D'ÉQUIVALENCE - Page 19

Nous endossons les recommandations visant à conserver la possibilité de conclure des ententes administratives ou d'équivalence, de même que le principe de rendre plus facile et plus courante la signature de telles ententes avec les provinces. Puisque l'environnement est de compétence partagée entre le gouvernement central et les provinces, nous croyons que toute bonne gestion de l'environnement ne peut se faire que par l'organisme le plus près des citoyens.

Cette réalité se retrouve d'ailleurs explicitée dans la section « Ententes générales pour la gestion de l'environnement ». Il s'agit maintenant de mettre en application ces recommandations.

TYPES D'INSTRUMENTS ÉCONOMIQUES - Page 22

Une proportion importante de l'aluminium produit au Canada est destinée à l'emballage et la canette demeure un contenant de choix. De tous les emballages, celui en aluminium est le plus facilement recyclable; une canette est recyclée à 100 % et elle peut l'être à l'infini, ce qui n'est pas le cas pour d'autres matériaux.

De plus, l'aluminium est le matériau qui a la plus grande valeur de toutes les matières recyclées. La consigne peut avoir un effet incitatif sur le consommateur, bien que de nombreux exemples montrent que la valeur même du matériau est souvent un incitatif plus grand.

L'industrie de l'aluminium ne s'objecte pas au principe de la consigne à la condition que son application soit généralisée et uniforme, et qu'elle ne soit pas utilisée comme barrière tarifaire déguisée.

APPROCHES NON RÉGLEMENTAIRES DE LA PROTECTION DE L'ENVIRONNEMENT

- Page 23

Nous souscrivons entièrement à toute initiative visant la mise en place de programmes volontaires ayant pour objectif l'amélioration de la qualité de l'environnement.

Notre industrie participe déjà de façon active à divers programmes volontaires dont, entre autres, C.I.P.E.C., ARET et VCR. Nous croyons que les moyens qui ont pour but de rendre plus responsables les entreprises ont souvent des effets très positifs et concrets, en fait, les entreprises appréhendent toujours une réglementation rigide et tatillonne, et elles seront enclines à s'engager dans des programmes volontaires.

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APPROCHES NON RÉGLEMENTAIRES DE LA PROTECTION DE L'ENVIRONNEMENT

- Page 23

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CHAPITRE 3 - PARTICIPATION DU PUBLIC - Page 25

Nous sommes en complet désaccord avec l'affirmation qui veut que pour s'assurer la protection du public, il faille lui conférer des droits légaux et prendre plusieurs mesures en vue d'accroître le droit du public de protéger l'environnement. Selon nous, la protection de l'environnement est si fondamentale qu'elle ne devrait pas être fonction des droits que les citoyens peuvent avoir mais de l'obligation qu'ils ont de respecter le milieu dans lequel ils vivent.

Nonobstant ce qui précède, nous reconnaissons bien sûr que les citoyens doivent avoir les moyens de dénoncer les pollueurs et, éventuellement, d'être compensés pour des préjudices subis.

La première phrase de ce chapitre mentionne que « la protection de l'environnement est l'affaire de tous ». Nous sommes en complet accord avec cet énoncé. Toutefois, dans les lignes qui suivent, on ne parle que des « droits » du citoyen et du public, et nulle part n'est-il fait mention des « obligations » des citoyens.

La pollution n'est pas réservée aux entreprises ! L'ensemble de la collectivité est aussi responsable de la dégradation du milieu.

L'ACCROISSEMENT DES DROITS DE PARTICIPATION DU PUBLIC - Page 25

Nous proposons de modifier le titre de cette section de façon à ce qu'il se lise ainsi :
« L'accroissement des droits et des obligations du public ».

L'industrie de l'aluminium reconnaît les principes selon lesquels le public a droit à un environnement sain, à une participation plus grande à la prise de décisions, à une meilleure information, à un accès aux tribunaux et à une protection des personnes qui dénoncent les pollueurs. La loi devrait plutôt favoriser le dialogue et le rapprochement entre les partenaires au lieu de tendre vers une approche juridique de règlement des différends, comme c'est le cas aux États-Unis.

Nous ne pouvons pas admettre que ces démarches soient à sens unique, sans qu'en retour de ces droits le public ne soit pas lui aussi responsable de ses actes.

La protection accrue des personnes qui dénoncent ne devrait pas s'appliquer uniquement envers les employeurs, qui ne sont pas les seuls coupables de la pollution. Une telle affirmation et d'autres du même type que nous retrouvons dans le document, démontrent soit une méconnaissance flagrante des réalités et des réalisations de l'industrie, soit un préjugé défavorable à l'endroit de l'industrie.

ACCÈS DU PUBLIC À L'INFORMATION - Page 27

Nous souhaitons que le public soit informé sur ce qui se passe dans son milieu : toutefois, nous mettons le gouvernement en garde contre la création d'un registre accessible à tous, même sur *Internet*, sans que le contenu de ce registre n'ait été soigneusement validé auprès des industries. La quantité et la nature des rejets d'une entreprise ne devraient pas permettre à des compétiteurs nationaux ou internationaux d'avoir accès à une information que nous jugeons confidentielle et que nous-mêmes ne pouvons pas obtenir de leur part. De telles informations pourraient nuire à la position concurrentielle des entreprises canadiennes.

RECOURS CIVIL POUR LA CRÉATION D'UN RISQUE ENVIRONNEMENTAL - Page 30

Bien que le document reconnaisse que la notion de « risque environnemental » doive être examiné plus à fond par des juristes, nous mettons le gouvernement en garde contre les conséquences néfastes et coûteuses que pourrait entraîner un tel principe. L'interprétation par les tribunaux d'une notion ou d'un principe dépasse souvent les intentions du législateur.

AUTRES DROITS DU PUBLIC - Page 31

L'industrie de l'aluminium a toujours été favorable à la transparence et à la divulgation d'informations de nature non compétitive, de même qu'à la consultation publique à la condition expresse qu'il ne s'agisse pas de demandes frivoles ou de demandes provenant de parties n'ayant pas un intérêt direct.

Nous ne croyons pas que le gouvernement doive financer les parties intéressées pour qu'elles puissent se faire entendre devant la commission de révision. Il existe, selon nous, suffisamment d'organismes représentant les intérêts du public capables de financer leur participation et souvent d'autres actions

CHAPITRE 4 - SCIENCE DES ÉCOSYSTÈMES ET NORMES NATIONALES

POUVOIR DU MINISTRE DE DEMANDER DES RENSEIGNEMENTS À DES FINS DE RECHERCHE ET DE PUBLICATION - Page 33

Nous nous objectons fortement à ce que le ministre fédéral de l'environnement dispose de pouvoirs discrétionnaires afin de recueillir toutes les données que possède ou contrôle une personne

CHAPITRE 6 - PRÉVENTION DE LA POLLUTION

PRÉVENTION VOLONTAIRE DE LA POLLUTION - Page 52

Il serait inutile, coûteux et inefficace d'établir un centre national d'information sur la prévention de la pollution; les organismes gouvernementaux sont déjà trop lourds et trop éloignés des réalités du milieu.

Les entreprises sont les meilleurs intervenants pour les activités reliées à la prévention de la pollution; il ne faut surtout pas alourdir le système.

CHAPITRE 8 - LUTTE CONTRE LA POLLUTION ET LES DÉCHETS

LA POLLUTION ATMOSPHÉRIQUE INTERNATIONALE - Page 61

Nous appuyons toute démarche visant à réduire la pollution atmosphérique, mais nous sommes d'avis que les moyens pour y arriver et les objectifs fixés devraient être déterminés après consultation avec l'industrie et les provinces, et non pas de manière unilatérale. Il y a loin de la coupe aux lèvres, par exemple, l'engagement pris par le Canada de stabiliser d'ici l'an 2 000 les émissions de gaz à effet de serre aux niveaux de 1990 est difficile à rencontrer pour des raisons techniques et économiques.

Avant d'imposer à l'industrie canadienne des objectifs ambitieux, le gouvernement du Canada devrait d'abord s'assurer que l'application de la réglementation par ses partenaires commerciaux n'est pas préjudiciable à notre développement.

DÉCHETS DANGEREUX - NOUVEAUX POUVOIRS LIÉS À L'INTERDICTION DES
EXPORTATIONS ET DES IMPORTATIONS - Page 67

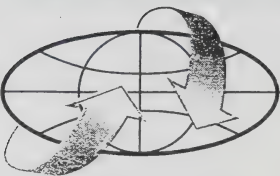
Il est important de reconnaître qu'il est difficile d'être « bon dans tout » et autosuffisant dans tous les secteurs.

La manutention et le traitement des déchets dangereux sont devenus des spécialités et ne doivent pas être laissés à des amateurs.

Si nous, au Canada, ou dans un pays voisin, nous disposons des technologies permettant le traitement des déchets dangereux dans des conditions sécuritaires approuvées et sur une base économique avantageuse, il devrait être permis d'importer ou d'exporter ceux-ci sans réserve.

CHAPITRE 9 - LUTTE CONTRE LES SUBSTANCES TOXIQUES - Page 75

Personne ne peut être contre l'élimination des substances qui répondent aux critères de toxicité, de persistance et de bioaccumulation. La détermination des substances qui répondent à ces critères ne devrait pas relever uniquement de fonctionnaires mais devrait plutôt être faite par un panel d'experts neutres regroupés sur une base ad hoc et devant lequel les fonctionnaires, l'industrie, les groupes écologiques et autres pourraient faire des représentations fondées sur des bases scientifiques démontrées. Les conséquences économiques considérables que peut entraîner la présence d'une substance sur la liste de la voie 1 et même de la voie 2 exigent que les plus grandes précautions soient prises. Le principe de la prudence doit en être une d'exception.



ASSOCIATION OF INTERNATIONAL AUTOMOBILE MANUFACTURERS OF CANADA
L'ASSOCIATION DES FABRICANTS INTERNATIONAUX D'AUTOMOBILES DU CANADA

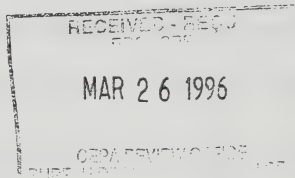
BMW CANADA INC., HONDA CANADA INC., HYUNDAI AUTO CANADA INC., JAGUAR CANADA INC., LADACANADA INC.,
AUTOMOBILI LAMBORGHINI SPA, LAND ROVER CANADA INC., MAZDA CANADA INC., MERCEDES-BENZ CANADA INC.,
NISSAN CANADA INC., PORSCHE CARS NORTH AMERICA INC., ROLLS-ROYCE MOTOR CARS (CANADA) LTD./LTEE,
SUBARU CANADA INC., SUZUKI CANADA INC., TOYOTA CANADA INC., VOLKSWAGEN CANADA INC.

BY FAX

(819) 997-0449

March 21, 1996

Ruth Wherry
Manager, CEPA Office
Environment Canada
Place Vincent-Massey, 15th Floor
Hull, P.Q.
K1A 0H3



Dear Ms. Wherry:

I am writing to you on behalf of the Association of International Automobile Manufacturers of Canada (AIAMC), whose sixteen members listed above are engaged in the import, distribution, and servicing of light-duty cars and trucks, accounting for 23% of such new vehicles sold in Canada during 1995. This submission responds to the request, published in Part I of the Canada Gazette, for comments on *Environmental Protection Legislation Designed for the Future -- a renewed CEPA*, the federal government's response to the Standing Committee report on CEPA.

AIAMC members have been acutely aware of their responsibility to deliver to consumers vehicles with emissions control systems that perform over the length of the vehicle's lifetime. With the 1995 and later model years, this is underscored by the lengthening of warranty protection, now eight years, for catalytic converters and other critical emission controls. While there is currently no legal requirement to do so, AIAMC members have generally followed the practice of their U.S. counterparts, in order that Canadian consumers may benefit from the most up-to-date emissions control technology available. This approach was recognized through the "Memorandum of Understanding" (MOU) that was in effect for the 1994 and 1995 model years between vehicle manufacturers and Transport Canada.

With the success of this approach, we are concerned over recommendation 8.7, that "we [the federal government] will examine the possibility of transferring legislative authority for emissions for new motor vehicles from the *Motor Vehicle Safety Act [MVSA]* to CEPA,...". In our experience, the current split of responsibilities between Environment Canada (for environmental policy) and Transport Canada (for regulation) works well, and we see little reason to study the matter. The current regime reduces the likelihood that the two departments will take policy approaches which are inconsistent or contrary to one another, as policy departments (such as Environment Canada, Natural Resources Canada & Industry Canada) consult extensively with Transport Canada before pursuing their departmental objectives through regulation alone. In such instances as the 1994-95 MOU cited above, this has worked well, saving government resources that would otherwise be required to administer regulations.

.../2

To split responsibility for vehicle safety and emissions between two departments will add to the costs borne by industry — costs resulting from building working relationships with officials from two departments; costs from overlap and duplication of work done by auditors and inspectors; and costs resulting from the prospect of inconsistent direction by different departments. Vehicle manufacturers remember the public debate between the U.S. Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration (NHTSA) on the safety of on-board refuelling vapour recovery (ORVR) controls in the early 1990's; while EPA supported the controls as a means of reducing evaporative emissions, NHTSA opposed them as a safety hazard (the result of fumes being contained within a canister on the vehicle). We would prefer to see in Canada that such a debate be resolved through departmental consultation, in order to give clear direction to vehicle manufacturers, before manufacturers begin to develop technology to meet future requirements.

We recognize that, in the past, there may have been a perceived "lack of accountability" between Environment Canada and Transport Canada, over responsibility for environmental policy. However, we believe that environmental policy should continue to reside with a policy-making department, just as responsibility for the related jurisdiction of energy policy should reside with Natural Resources Canada. These policy areas should interact before regulations are proposed, and then a single agency should be responsible for proposing and administering those regulations. At a time when provincial jurisdictions are encroaching into the area of emission standards, it appears costly and redundant to add another layer of federal government regulation, without demonstrable environmental benefit.

We hope these points will assist you in considering the future direction of the CEPA and the MVSA, and would be pleased to answer any questions.

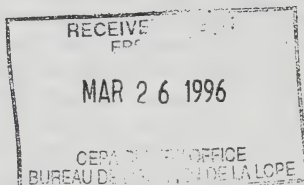
Yours truly,

A handwritten signature in dark ink, appearing to read "Adrian Bradford". The signature is fluid and cursive, with the first name "Adrian" being more prominent than the last name "Bradford".

Adrian Bradford
Associate Executive Director



AECL EACL



Whiteshell Laboratories

Pinawa, Manitoba ROE 1L0

Phone: (204) 753-2311

FAX: (204) 753-2452

File No.: HT-96-001

Date: 1996 March 20

Ms. Ruth Wherry
CEPA Office
Regulatory Affairs and Program Integration Directorate
Environment Canada
351 St. Joseph Blvd. 15th Floor
Hull, Québec K1A 0H3

Dear Ms. Wherry:

Atomic Energy of Canada Limited (AECL) has reviewed the Federal Government's Response "*Environmental Protection Legislation Designed for the Future -- A Renewed CEPA*". Overall, we concur with the government's decision to up-date the CEPA legislation. It is important that the Act better reflect current scientific and environmental understanding and fully integrate the government's sustainable development goal. Also, in an effort to "ensure the greatest level of environmental protection at the least cost" we encourage the government to maximize harmonization with other federal and provincial legislation in order to avoid unnecessary duplication. For example, AECL feels that the current regulatory framework governing radioactive substances is extensive and effective. We therefore see no need to regulate radioactive substances under CEPA.

We are unable to provide detailed comments on the Government's Response, since its full implications depend on how the new CEPA will be implemented by government. We would encourage the government to work closely with all stakeholders, including industry, to maximize public acceptance and understanding. If the government holds a multi-stakeholder workshop with regard to the proposed amendments to CEPA, AECL would welcome an invitation to participate.

We also agree with the government's view that co-operative approaches to environmental protection are the most effective way to proceed. To ensure an efficient and transparent mechanism, we recommend that membership of the proposed National Advisory Committee be extended to include a Multi-stakeholder

Advisory Sub-committee. Such a mechanism will strengthen partnerships and facilitate open and transparent dialogue between stakeholders. An open consultative mechanism may even strengthen stakeholder acceptance of new regulatory and non-regulatory measures.

Finally, as a science based industry, we strongly concur with the government's statement that, "environmental regulations must be based on science, consider the economic impact and be strictly enforced, but not inflexible".

We appreciate this opportunity for input and we look forward to assisting in you in this process in every way we can.

Sincerely,

A handwritten signature in black ink, appearing to read 'H. Tamm', with a stylized flourish at the end.

Heiki Tamm, PhD
Director, Compliance and Quality Management.

cc: Dr. R. Morrison, Director General, Uranium and Nuclear Energy Branch
Natural Resources Canada



Avenor
inc.

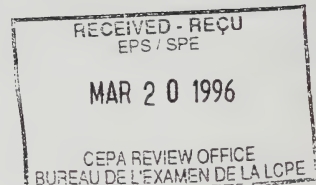
An international forest
products company

W.M. Vrooman
Vice-President, Environment

1145 Hunt Club Road, Suite 400
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Tel. (613) 247-4304
Fax (613) 247-1605

March 18, 1996

CEPA Office
Environment Canada
15th Floor, Place Vincent Massey
351 St. Joseph Blvd.
Hull QC K1A 0H3



Dear Sir/Madam:

I am pleased to submit Avenor Inc.'s comments on the *Environmental Protection Legislation Designed for the Future - A Renewed CEPA*, the Government of Canada's response to the House of Commons Standing Committee on Environment and Sustainable Development Report on changes to CEPA.

I appreciate the opportunity to provide these comments for consideration in the review of this key Canadian environmental legislation. I would be pleased to participate in any further discussions. For further clarification on any aspect of this submission, please contact me at your convenience.

Yours truly,

W.M. Vrooman

Enclosure

cc: A. Clarke
E. Norrena
P. Gagné



CEPA REVIEW

The following comments are being submitted by Avenor Inc. for consideration in the review of the Canadian Environmental Protection Act (CEPA), as outlined in the Government's proposal "*Environmental Protection Legislation Designed for the Future , A Renewed CEPA*".

Overview

Avenor compliments the Government of Canada in its response to the House of Commons Standing Committee on Environment and Sustainable Development recommendations for changes to CEPA. Our company had serious concerns with a number of the recommendations submitted by the Standing Committee, as we felt that they did not recognize the significant and continuous improvements to environmental protection being undertaken by industry. The government's response provided some encouragement and recognition of these efforts.

However, a prevalent concern remains in the government's proposal. Several sections continue to indicate a lack of commitment by the government to the harmonization of regulations and enforcement activities with the provinces. In the 1990's, we can no longer afford the luxury of duplication in regulation, monitoring and enforcement, particularly as both government and industry face the increasing challenge of reduced manpower and the need to be more efficient and competitive. We strongly support the federal government's role in establishing national standards, co-ordinating research and development activities, mediating cross-boundary pollution, and participating in global environmental problems. However, the day-to-day activities on regulatory enforcement and reporting must be done by a "one window approach", which we believe is best delegated to the provinces, as the infrastructure to deal in these areas is generally already well established.

Some specific comments on key chapters are highlighted below:

Chapter 1: Guiding Principles

We support the guiding principles of pollution prevention, ecosystem approach, biological diversity, intergovernmental cooperation, and economic responsibility being proposed for CEPA. We accept the adoption of the precautionary principle, however, we emphasize the need for further discussion with industry specifically in the areas of definition, interpretation of scientific certainty, and the applicability of adopting decisions made by other countries or jurisdictions. Further, we support the inclusion of the principle of biological diversity in the preamble to CEPA but caution that definitions and indicators require additional discussion.

Chapter 2: Administration

We are encouraged with the government's position to fully consider the use of other non-regulatory approaches to environmental protection, such as the use of economic instruments, and voluntary measures. These additional options provide the flexibility needed to most efficiently and effectively address environmental concerns. In addition, we strongly support the inclusion of the Minister of Finance in the decision-making process around the use of economic instruments and highlight the need for discussion with industry to further develop these concepts.

The discussion on the proposed CEPA National Advisory Committee seems to suggest that industry will not be represented in any capacity on this committee. We feel strongly that our participation would be necessary and beneficial. Delegating industry participation to another committee would not be acceptable.

Proposals on cost recovery are put forward a number of times in the document. This concept can be viewed as an additional tax and therefore requires further discussion and definition with industry.

Chapter 3: Public Participation

We recommend that the expansion of public participation and rights be developed in view of the present provincial requirements, specifically from lessons learned through Ontario's Environmental Bill of Rights process. This also applies to the suggested creation of a public electronic registry.

Chapter 4: Ecosystem Science and National Norms

We are encouraged that the importance of science-based decision-making is recognized and agree that science is the essential base of an environmental protection strategy.

The collection, processing and publishing of data represents an area of significant duplication with provincial jurisdictions. We propose that with existing sophisticated communication technology the reporting of data electronically through one window for all interested parties is highly achievable and would allow all government reports to be generated from a common database. This also applies to the development of a national spill-reporting network. Industry would be more than willing to work with all regulatory jurisdictions to reach these goals.

Chapter 5: Enforcement

It would seem by this chapter that the federal government intends to step up its enforcement program and this move is in direct conflict with the stated goal of harmonization.

In our opinion, other than with respect to federal properties, enforcement should be the responsibility of the provinces. Inspections and investigations by two enforcement agencies for the same incident or violation is not productive nor economically acceptable as it involves duplication of effort and different interpretations.

Further, while the government has recognized the key problems with the current legal system, such as being too lengthy and too costly, it does not address how to correct these concerns. This chapter provides a list of all types of enforcement options, such as AMPs, ticketing, and cease-and-desist orders and lacks a clear and distinct overall enforcement approach. We recommend that the enforcement section be revisited, given the experience with this legislation to date, to develop a clear co-ordinated plan of enforcement to be applied under CEPA with duplication with the provinces.

Chapter 6: Pollution Prevention

We strongly support the government's position that pollution prevention is the preferred approach to environmental control. This concept has been practised by this industry for years and a few examples include our efforts in solids recovery, water reduction, PCB removal, dioxin and furan elimination, and elemental chlorine reduction. We will continue to practice this principle but caution that in number of circumstances this practice is not the only answer. To reply to any environmental concern or infraction with only a pollution prevention plan may not be feasible or economically justified. We are also concerned that the requirements for model pollution prevention plans are somewhat prescriptive and should be broadened to allow the most effective option for prevention to be implemented.

The Prevention, Preparedness, Response and Recovery Framework, as outlined in the proposal, should definitely be the responsibility of the provinces. A possible exception to this may be in the case of spills to coastal or international waters but in any event this duplication should not exist.

Chapter 9: Controlling Toxic Substances

The federal Toxic Substances Management Policy is reasonable and to date has been working well. Our only concern remains the plethora of lists of substances for control, including the Priority Substance List. We strongly urge the government to work with other international and provincial authorities to establish a single consolidated list of substances that is acceptable to all parties. Separate lists from federal and provincial authorities and international bodies, such as the IJC and potentially NAFTA and others, represents an unacceptable situation.

Jane Thornthwaite, B.Sc., B.H.E.

Registered Dietitian Nutritionist
Nutrition Consultant
1886 Berkley Road
North Vancouver, B.C. V7H-1Z3

RECEIVED
MINISTER OF
THE ENVIRONMENT

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Telephone (604) 929-9482
Fax (604) 929-8435

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March 22, 1996

Fax to The Honorable Sergio Marchi
Minister of the Environment
1 - 819-953-3457

Dear Mr. Marchi:

It has come to my attention that you are seeking input on the CEPA Review: The Government Response: Environmental Protection Legislation Designed for the Future - A Renewed CEPA.

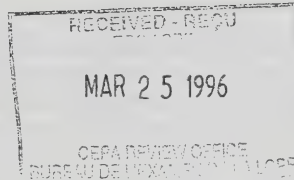
The B.C. Dietitians and Nutritionists Association Biotechnology Committee has some concerns about your response that evolve around the weakening of CEPA for products derived through biotechnology. We therefore have reviewed the document, reviewed the Canadian Environmental Network's response, and Brewster Kneen's response and wish to endorse their recommendations. I have enclosed them for your information.

The B.C. Dietitians and Nutritionists Association has been involved in food biotechnology issues for three years and hope that the government of Canada takes a holistic view of the implications of products derived through biotechnology (particularly genetic engineering) and consider the environmental, socio-economic, ethical and agricultural sustainability issues as well as the healthy and safety aspects that these new technologies bring to light. We are concerned that the government is leaning towards the U.S. position and looking only at the end product, not the process by which it is produced. People consume foods for many different reasons besides nutrition and all of those can effect nutritional status. We recommend that the government consider what other countries besides the U.S. are doing and look at the reasons some European companies have taken the stands that they have pertaining to genetic engineering.

If you would like further information on the work that we have done to date and our concerns, please do not hesitate to contact me.

Jane Thornthwaite, R.D.N.
Chair, BCDNA Biotechnology Committee

Kashi Mattu
Manager
Government Relations
Phone: (604)623-4150
Fax: (604)623-3937



March 18, 1996

Ms. Ruth Wherry
Director, CEPA Office
Environmental Protection Services
Environment Canada
Ottawa, Ontario
K1A 0H3

FAXED

Dear Ms. Wherry:

B.C. Hydro appreciates the opportunity to comment on the Government's paper "Environmental Protection Legislation Designed for the Future - A Renewed CEPA", which outlines proposals to renew the Canadian Environmental Protection Act (CEPA).

Acknowledgment of the important role of the economy in fostering sustainable development and its recognition as a key element in the proposals to renew CEPA are welcomed. This recognition of economic responsibility and well-being has been lacking in previous efforts to promote sustainable development.

B.C. Hydro is also very supportive of the underlying philosophy of inter-governmental cooperation to further the effectiveness and efficiency of environmental protection and management. B.C. Hydro urges the Minister and his Provincial colleagues to expeditiously negotiate and implement joint environmental protection and management agreements as outlined in the Canadian Council of Ministers of the Environment (CCME) harmonization initiative.

Action to reduce known regulatory duplication and overlap is imperative. A case in point is the confusion over PCB storage in regulations in B.C. In 1992, the Federal regulations were finalized but did not renew an equivalency status with existing, compatible Provincial regulations. Since then, B.C. Hydro and other organizations have had to comply with two sets of overlapping, incompatible regulations. This is not an acceptable situation for industry.

Regulatory inertia in resolving this well-documented situation undermines the credibility of the harmonization initiative.

Harmonization of these proposed changes to CEPA with existing Provincial regulatory regimes and requirements is necessary to ensure complementary rather than conflicting legislation. Revisions to CEPA also provide a window of opportunity for the Government of Canada to eliminate the inconsistencies among various federal Acts, particularly those regarding the requirements for classifying and labeling toxic substances.

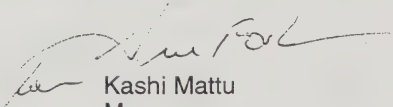
CEPA revisions should aim at creating, with full stakeholder participation, one set of environmental regulations to be appropriately administered and enforced by one level of government. However, the proposed expansion of enforcement powers does not appear to be consistent with the concepts of harmonization and inter-governmental approaches. It is our expectation that enforcement and administrative responsibilities will evolve to Provincial authorities while the Government of Canada focuses on the development of harmonized national standards and regulations.

Revising CEPA provides an opportunity for the Government to explicitly state its support for the concept of non-regulatory, voluntary initiatives and associated economic and social benefits. Non-regulatory approaches would not compromise standards of environmental performance and are consistent with the guiding principles of sustainable development.

Equally important is the need to move towards cooperative and balanced decision-making. The undertaking to include "equal emphasis on concerns related to the environment, the economy and the community" in an ecosystem approach to environmental decision-making is, from our perspective, essential. Regulatory agencies often have a narrow, single jurisdictional focus, which can hinder efforts to implement balanced decision-making for sustainable development.

Our detailed comments on the Government's proposals to renew CEPA follow. B.C. Hydro will be an active participant in the ongoing dialogue to improve the effectiveness of Canadian environmental legislation. We hope B.C. Hydro will have a further opportunity to comment on your specific proposals to amend CEPA, which are planned for introduction in the fall of 1996.

Yours truly,



Kashi Mattu
Manager
Government Relations

cc: CEA - Pierre Guimond

“CEPA REVIEW: THE GOVERNMENT RESPONSE”

COMMENTS BY B.C. HYDRO

Chapter 1

1.7 - Precautionary principle

- B.C. Hydro is generally supportive, but shares concerns that the principle could serve as a “cloak for inadequate science”.
- Implementation of lowest social cost environmental measures must be supported by sound scientific principles.

Chapter 2

2.7 - Equivalency agreements

- It is not clear if the Minister would enter into equivalency agreements with Aboriginal Peoples.

2.12 - General Agreements - Aboriginal Peoples

- The Federal Government has consulted on the development of the harmonization process and the draft Environmental Management Framework Agreement. Will the same consultation opportunities be afforded on the development of similar agreements between Canada and self-governing Aboriginal Peoples?

2.14 - Non-regulatory approaches

- Consultation to develop appropriate non-regulatory approaches to environmental protection is supported. Self-regulation provides industry with the ability to comply with a standard of environmental performance consistent with the intent of CEPA while avoiding onerous administrative requirements.
- CEPA could also provide a mechanism to allow equivalency agreements between government and industry. Currently there is no provision in CEPA to grant exemptions to certain requirements of regulations. Exemptions would permit industries with operational constraints to meet the intent of the regulation through alternate, equivalent requirements.

2.16 - Reporting

- A CEPA review is proposed every 7 years and a 5-year sunset is suggested for CEPA equivalency and administrative agreements, as well as for the proposed CCME harmonization agreements. What is the rationale for the longer CEPA review period?

Chapter 3

3.8 - Whistleblower protection

- The “good faith” requirement should be strengthened by a requirement that whistleblowing must not be frivolous or vexatious.

The Right to Sue

- It may be more appropriate for an individual to appeal the Minister's response, or lack thereof, rather than initiate a civil suit against a party accused of violating CEPA. It is necessary to clarify the kind of relief the aggrieved party would receive, what court such actions would be heard in and if Environment Canada would, itself, join the civil action.

Civil remedy for environmental risk

- B.C. Hydro strongly urges further research of the concept of suing for risk. Some questions which need to be clarified include: What would happen if the risk is never or only partially realized? What kind and degree of risk? What is the proper measure of damages? Would the courts entertain potential risk in place of actual damages or infringement of rights?
- Allowing civil actions to proceed on the basis of "prima facie" cases and employing "reverse onus" means injustice for defendants. As the Standing Committee itself noted, it received only one submission on this issue. Such a fundamental change in common law convention requires a much more detailed and thorough review.

Chapter 4

4.1 - Information for research and publication

- Recognition of the administrative burden on industry to meet information requests and the need to exercise restraint in using the information gathering powers should be included in the amendments describing this Ministerial authority.

4.7 - Ministerial obligation

- National objectives, norms, guidelines or codes of conduct should be results-oriented with clearly defined responsibility and accountability.

4.8 - Ministerial obligation

- It is appropriate that the obligation to develop "objectives, guidelines and codes of practice... that may affect the life and health of the people of Canada" remain with the Minister of Health.

Chapter 5

5.1 - Administrative Monetary Penalties

- Amendments should ensure that any reviewing or appellate authority should be given the power to stay penalties or conditions pending appeal.

5.7 - Cease-and-Desist Orders

- As cease-and-desist orders are serious actions, analogous to injunctions, the issuer of the order should be required to consider the

- economic and other non-environmental consequences of such orders on the named party as well as members of the public.
- Terms and conditions, which should be evaluated in a review of procedural controls, should include a belief that facts, necessary to justify cease-and-desist orders, are based on reasonable and probable grounds.
 - The issue of holding inspectors personally liable for making such serious orders if not done in good faith should be addressed and, if warranted, be included in legislative amendments.

5.8 - CEPA inspectors

- Government must ensure there is adequate resourcing for CEPA inspectors to enable them to effectively carry out their responsibilities.
- Would CEPA inspectors have access to Aboriginal Treaty lands as well as private property?

Chapter 6

6.1 - Pollution prevention planning

- B.C. Hydro supports the need for further consultation to develop criteria for ministerial requirements to produce pollution prevention plans.
- Defining the criteria is critical to addressing concerns regarding consistency with existing reporting requirements, common thresholds, provincial requirements and the need for only one level of administration.
- Proposed pollution prevention plans should be consistent with the current ARET initiative and NPRI reporting requirements. Reasonable thresholds must be prescribed to determine who needs to prepare and implement plans.
- A harmonization agreement(s) prior to inclusion in a revised CEPA is desirable.

6.17 - Spill reporting

- Development of a national spill-reporting network should ensure Provincial reporting requirements are not duplicated. This should be undertaken as part of the CCME harmonization initiative to avoid any overlap.

Chapter 8

8.1 - Regional airshed management

- Opportunities for implementing comprehensive airshed management should be clarified by defining "significant contributors to transboundary or global air pollution".
- Other stakeholders should be involved in the development of frameworks to control international air pollution, a wide range of economic instruments, and management strategies.

- Emissions trading of only SO_x and NO_x is too limiting. Greenhouse gases should also be included.

8.12 - Hazardous waste definition

- A Canadian, national definition of hazardous waste is needed to establish a level playing field across all jurisdictions. At present hazardous waste is defined at the provincial level. Management requirements to deal with the wide range of hazardous/industrial waste definitions has led to inconsistency, confusion and unwarranted expenditures.

8.15 - Hazardous waste phase out

- Is there a policy to eliminate hazardous waste exports? If so, this policy should undergo a public review.
- Has a Regulatory Impact Analysis, including a cost benefit study, been conducted for any proposed policy changes?
- Is this proposal consistent with the anticipated lifting of the ban of hazardous waste exports to the U.S. for disposal?

8.18 - Non-hazardous solid waste controls

- Has a Regulatory Impact Analysis, including a cost benefit study, been conducted for the proposed controls to demonstrate that tangible benefits outweigh administrative burdens?

8.20 - Interprovincial movements of hazardous waste

- The benefits or need for this proposal are unclear as the requirements of the TDG Act and the B.C. Waste Management Act appear to be duplicated. The TDG Act provides for manifest tracking and requires emergency response plans. Changing the existing legislation, which works, appears to be contrary to the spirit of the harmonization initiative. Has a Regulatory Impact Analysis been carried out?

Chapter 9

9.1 - Controlling toxic substances

- Toxic substances which are targeted and limits on releases, reduction or elimination must be consistent across Canada.
- The process for designating substances as CEPA toxic is unclear. It should be fair, based on sound scientific principles and involve participation from potentially affected stakeholders.

9.14 - Managing risks posed by toxic substances

- The scheme of virtual elimination as discussed in the Toxic Substances Management Policy (TSMP) is of concern. The goal of virtual elimination is commendable. However, virtual elimination of Track 1 substances as it pertains to management of contaminated sites could result in exorbitant expenditures if sites need to be remediated by removing contaminated soils.

- TSMP is unclear on the acceptability of in-situ management of Track 1 substances for sites under provincial jurisdiction as it considers in-situ remediation only for sites under federal jurisdiction.
- Clearly define “virtual elimination”, its application and the use of risk assessment/risk management for remediation of sites contaminated by Track 1 substances. Managing in-situ contamination can provide the same level of protection that would be offered by higher social costs associated with physical removal of the contaminant.
- Consistency with provincial jurisdiction is essential for improved environmental protection and management.

9.16 - Industry responsibility, Track 1 substances

- If industry is required to implement plans for “virtual elimination” of Track 1 substances, appropriate taxation relief or credit measures should be introduced to recognize this new financial burden.

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd-DCU-DOE

MAR 22 1996

Rec'd-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: KATIE BAGNALL

Address: RR #1

Aylesford N.S.

BOP 1C0

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd-DCU-DOE

MAR 25, 1992

Regu-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Teresa Faldo

Address:

RR #3 Middleton

Ont.

N305 1P0

038962

BANFF RECYCLING SOCIETY

Beth Woolley
Box, 2056
Banff, AB., T0L-0C0

Telephone 403 762-5465
Fax 403 762-3565

Rec'd-DCU-DOE

MAR 25 1996

Regu-UCM-MDE

0-1025-1

Honourable Sergio Marchi,
Minister of the Environment,
10 Wellington St.,
Ottawa.

March 12 1996.

ATTENTION Mr. Marchi,

I am responding on behalf of the Banff Recycling Society during the public comment period on the Renewed CEPA. The Protection Legislation Designed for the Future. Many Canadians worked tremendously hard to revamp CEPA, we see very few of the 141 recommendations put forth.

Canada as a nation is embarrassingly weak with regards to environmental leadership, it's never too late though. This could be somewhat rectified by endorsing and implementing all 141 recommendations of "It's About Our Health! Towards Pollution Prevention."

1. The environment and humans can no longer tolerate the use and release of persistent chemicals, as they most certainly do build up in both humans and wildlife. These chemicals should be phased out in an expedited program.
2. Canadians need an environmental bill of rights. To allow workers the right to refuse to pollute, of which includes the right to intervene when the environment is being harmed and the right to sue polluters who do break the law.
3. A national pollution release inventory should be enforced and regulated giving Canadians the right to know who is releasing which pollutants into the environment through comprehensive public access to information that includes all toxic releases to the environment including substances sent off site for recycling or incineration.
4. A new section should be added to CEPA to be administered by Health Canada and Environment Canada which applies to all biotechnology and products which may enter the environment. We need to see priority for the protection of human health, safety, and the environment via the governing and regulating of biotechnology.
5. We need strict legislative authority to control vehicle emission by transferring authority from the Motor Vehicle Safety Act to CEPA. These enforceable air standards would also demonstrate some leadership to our commitment to stabilize greenhouse gases at 1990 levels.
6. The Attorney General's power to intervene to stay private prosecutions should be subject to specific guidelines to ensure there is no potential to abuse this broad discretionary power.

The Banff Recycling Society firmly believe that CEPA should and can protect the environment and human health, to achieve CEPA's needs to restructure Environment Canada to ensure strengthened enforcement.

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



Rec'd-DCU-DOE

MAR 27 1990

Regu-UCM-MUC

I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Michael S. B.

Address:

RR#1 LAURENCE TOWN 1190 Middle Road
Amherst, Co. N.S. B0S 1M0

Rec'd-DCU-DOE

MAR 28 1996

Reçu-UCM-MDE

R.R. #2
Clayton, On.
K0A 1P0

March 20, 1996

0-1025-31

The Hon. Sergio Marchi
Minister of the Environment
Terrassess de la Chaudiere
10 Wellington Street
Hull, Quebec
K1A 0H3

139118

Dear Minister:

I am writing to you regarding the government's proposals for the regulation of biotechnology contained in its December 1995 response (*Environmental Protection Legislation Designed for the Future*) to the June 1995 report of the House of Commons Standing Committee on Environment and Sustainable Development (*It's About Our Health!*). I am deeply concerned that the government's proposal would significantly weaken the provisions of the existing Act as they apply to biotechnology. The minimum standards for notification and assessment of toxicity for all products of biotechnology currently provided for by CEPA would be eliminated.

This proposal is inconsistent with the intent of the Standing Committee's recommendations regarding the regulation of biotechnology under CEPA, and could endanger the health, safety and environment of Canadians. It must be rejected.

Rather, consistent with the intent of the Standing Committee's recommendations, a new biotechnology part should be established under the CEPA. The new CEPA biotechnology part should:


- apply to all products of biotechnology which may enter the environment, including those which the government currently proposes to regulate under other Acts, such as the *Seeds Act*, the *Pest Control Products Act*, and the *Fertilizers Act*;
- establish requirements for the assessment of biotechnology products in terms of their:
 - potential immediate or long-term, direct or indirect effects on human life and health, the environment, and biodiversity, including cumulative impacts;
 - potential effectiveness of the products for their intended purposes; and
 - the availability of alternative means of achieving products purposes which may present lower potential for harm to the environment and human health;

- provide for public participation in decision-making regarding biotechnology, including:
 - public notice of major decisions regarding biotechnology products;
 - public notice of proposed field tests of biotechnology products;
 - opportunities to appeal government decisions regarding biotechnology products, including the approval of field tests; and
 - enhanced access to information regarding products of biotechnology;
- establish a full-cost recovery, user-pay system for approvals of biotechnology products; and
- provide for the establishment of a database of environmental releases of products of biotechnology in Canada.

More broadly, the government should:

- take a leadership role in environmental protection by setting strong environmental standards;
- ban or phase out the use and release of chemicals that persist in the environment and build up in wildlife and humans;
- introduce an Environmental Bill of Rights, which includes the right to intervene when the environment is being harmed, and the right to sue polluters who break the law; and
- inform the Canadian public who is releasing toxic pollutants into the environment, including substances sent off-site for recycling or incineration.

Sincerely,


Audrey Baran

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd - DCU - DOE

APR 23 1996

Regu - UCM - MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Caryn Barron

Address: 417 Palmer Rd

R.R. 6 Kingston

N.S. BOP 1R0

CEPA

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Steven M. Baxter

Address: P.O. Box 1, Site 4, Middleton, Innapule
Co, N.S. BOSIPO

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd-DCU-DOE

MAR 22 1996

REC'D-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: PHYLLIS BENT Phyllis Bent

Address: Victoria, Yada.

Anna Co. W.S. BC S1 PC

RECEIVED
MINISTER OF
THE ENVIRONMENT

MAR 20 2 44 PM '96

Recd-DCU-DOE

MAR 1

BETH JACOB SISTERHOOD

Repu-UCM-31

63 Dempsey Avenue
Regina, Saskatchewan
S4T 7K8

March 19, 1996

The Honourable Sergio Marchi
Minister of the Environment

139229

07025-31

Dear Mr. Marchi;

The members of Beth Jacob Sisterhood, the women's auxiliary organization of Beth Jacob Synagogue, are alarmed that reform of the Canadian Environmental Protection Act may threaten environmental protection and the health of Canadians.

Proposed reforms to CEPA will weaken the role of the federal government in regulating biotechnology. These changes will also limit federal strategies to combat international air and water pollution. Since threats to human and environmental health do not respect local boundaries, we urge the federal government to greatly expand and strengthen environmental standards to protect all Canadians.

We also request the federal government to enact legislation preventing the use and generation of pollutants. Persistent chemicals that build up in wildlife and humans should be banned or phased out, since they threaten our health and the health of our world. An effective Environmental Bill of Rights will allow access to information about toxic releases into the environment, permit public intervention when the environment is threatened, and enable Canadians to sue polluters.

We look forward to seeing the federal government respond to the need for environmental legislation reform by assuming a strong leadership role in protecting and healing our environment.

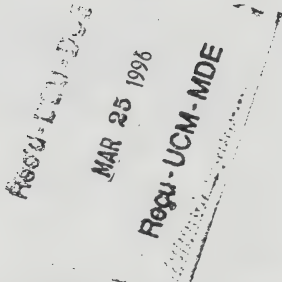
Respectfully,

Roberta Swetlow

Roberta Swetlow
President
Beth Jacob Sisterhood

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Gregory S. Blocklock Gregory S Blocklock

Address: RR#2

Middleton N.S BOS IPO

Rec'd-DCU-DOE

87732

23 January 1996

FEB 6 1996

Honourable Sheila Copps
Minister of the Environment
House of Commons
Ottawa, ON
K1A 0A6

Requ-UOM-MDE

0-1035-1

Re: Canadian Environmental Protection Act

Dear Madam,

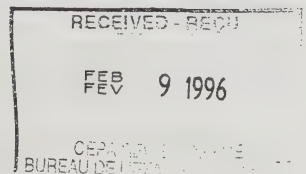
Following on the tabling of your Government's response on this matter on December 15 1995, I wish to add my voice to that of the Canadian Environmental Law Association and the Canadian Institute for Environmental Law and Policy.

It is my surmise that it is mainly industry that is calling the shots for the law, and I wish to list the Government's failures below as outlined by the two afore-mentioned organizations.

- require the phase out of all persistent toxic chemicals;
- require industry to develop plans to avoid the use of dangerous chemicals;
- regulate the environmental impacts of biotechnology;
- give citizens public participation rights and effective rights to sue polluters who break environmental laws;
- deal with any recommendations on coastal zone management; and
- deal with any measures to protect biodiversity.

Yours truly,

Anne S. Bosch



Anne S. Bosch 207 West Carisbrooke North Vancouver, BC V7N 2S2 (604)
988-8088
Fax (604) 987-9188

**BREAST CANCER RESEARCH AND EDUCATION FUND**

March 22, 1996

The Honourable Sergio Marchi
Minister of the Environment
Terrace de la Chaudiere
23rd Floor
10 Wellington Street
Hull, P.Q., K1A 0H3

Dear Mr. Marchi:

Re: Federal government's proposed changes to CEPA

In virtually every nation, breast cancer incidence is rising with industrialized countries reporting higher rates than less developed countries. Although breast cancer incidence rates increase with age over a lifetime, the rate of acceleration is greater before age 50 in the Western countries. More young women are being diagnosed with the disease; and it is the leading cause of death for women 35-55 years of age.

Broader strategies for prevention are necessary as over 70% of the women in Canada with breast cancer do not have any of the identifiable risk factors.

The world wide increase in breast cancer rates has occurred during the same period in which the global environment has become contaminated with industrial, synthetic chemicals, including chlorine-based toxic and persistent organochlorines (**RESEARCHERS REPORT THAT ORGANOCHLORINES ARE A FACTOR IN HORMONAL DISRUPTION, MALE INFERTILITY, ABNORMALITIES OF THE MALE REPRODUCTIVE TRACT, IMPAIRED CHILDHOOD DEVELOPMENT, BIRTH DEFECTS, LOW BIRTH WEIGHT, BREAST AND OTHER CANCERS**) - found in air, water, food, cells of wildlife and humans.

Environmental forces are emerging as fundamental in the equation of women's risk factors for breast cancer; and chlorine-based chemicals in particular have been the focus of recent studies (**ORGANOCHLORINES HAVE BEEN FOUND TO COLLECT IN ANIMAL FAT AS WELL AS IN HUMAN BREATH, SEMEN, BREAST MILK, TISSUE AND BLOOD**). They have been found in breast tissue and in blood at higher rates in women with breast cancer. Organochlorines appear to mimic oestrogen - long associated with breast cancer; and appear to function as xenoestrogens (foreign oestrogens) possibly increasing the risk of breast cancer by mechanisms including the interaction with breast cancer susceptibility genes.

Recently in November of 1995, the Breast Cancer Fund hosted the first International Conference on Breast Cancer and the Environment held in Niagara Falls with financial assistance from the Ontario Women's Directorate (Province of Ontario) and the Great Lakes Health Effects Program (Health Canada). The Theme of the Conference was: "Pollution Knows No Boundaries". For the first time in the history of breast cancer, scientists in the breast cancer field and those familiar with the health of wildlife in the Great Lakes Basin were brought together to report on possible links to the environment.

8 Peard Ann Drive, St. Catharines, Ontario, Canada L2T 3B3 • Phone (905) 687-3333 • Fax (905) 687-1127

Charitable Registration No. 0911206-11

- 2 -

Some of the notable scientists who gave so generously of their time were: Devra Lee Davis, Ph.D., M.P.H., Senior Fellow with the World Resource Institute and Senior Advisor to the U.S. Assistant Secretary of Health and Human Services, Washington, D.C.; Rosalie Bertell, Ph.D., G.N.S.H., Scientific and Human Rights Consultant to the International Institute on Concern for Public Health and Recipient of the United Nations Global 500 Environmental Award; Ross Hume Hall, Ph.D., Professor Emeritus of Biochemistry from McMaster University and Past Canadian Chair of the Human Health Committee, International Joint Commission; Michael Gilbertson, M.Sc. of the International Joint Commission on the Great Lakes; Harlee Strauss, Ph.D. lead researcher with the Silent Spring Institute, Newton, M.A. and Rita Arditti with a doctorate in biological science.

Although Dr. Theo Colborn, a senior researcher with the Washington-based World Wildlife Fund; was unable to be present, the video - "Hormone Copy-Cats" was shown and information from the video is enclosed which will show the importance of the research to date. As you may know, Dr. Colborn is co-author of the recently released book, "Our Stolen Future" in the United States. The Wall Street Journal, March 7, 1996 reported that Vice-President Al Gore, in the forward states, "Our Stolen Future takes up where [Rachel] Carson left off". Although controversial, it was reported (Wall Street Journal, 1995) that PCB's are reported to increase in concentration up to 25 million times as they move through the food chain.

The purpose of the Conference was not only to inform, but to create new and unique partnerships to assist in providing broader strategies for prevention of this dreaded disease. Cancer activists and environmentalists are encouraging and supporting a growing number of courageous scientists, epidemiologists, and physicians who are attempting to break the silence and defying traditional medical models and norms to research and identify toxins, radioactive toxins; hormonal abuses they believe are linked to breast cancer.

The relationship between organochlorine contamination, endocrine disruptors and breast cancer provides compelling new support for the International Joint Commission on the Great Lakes' recommendation for **ZERO DISCHARGE OF PERSISTENT TOXIC SUBSTANCES AND THE GRADUAL PHASE-OUT OF CHLORINE-BASED CHEMICALS AND RADIONUCLIDES**. As you know, the IJC is a U.S. and Canadian Government body which has studied the Great Lakes unique ecosystem for the past 15 years and is calling for a "WEIGHT OF EVIDENCE" approach.

Because pollution knows no boundaries and there is substantial evidence of deteriorating health of humans and wildlife, it is imperative that the federal government take a strong leadership role in environmental protection by setting strong, forward thinking environmental standards.

A clever person solves a problem,

A wise person avoids it.

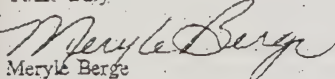
Paraphrase - Albert Einstein

The protection of human health, safety and the environment should be the priority of the government in the regulation of biotechnology. A new section should be added to CEPA to be administered by Health Canada and Environment Canada, which applied to all biotechnology products which may enter the environment.

The Canadian public should also have the right to know who is releasing which pollutants into the environment through comprehensive public access to information that includes all toxic releases to the environment.

We would also like to sign on to the statement, "It is still about our health: Commenting on the Government Proposal to Reform the Canadian Environmental Protection Act" enclosed with this letter.

Yours truly



Meryle Berge

President

Breast Cancer Research and Education Fund (Ont.)

Encls.

DEAR HONOURABLE :

I REJECT the Liberal Government's
Committee's report on the Canadian
(CEPA), Revisited.

I DEMAND that my government preser
my health and the environment by acce
as written in the Standing Committee's

Honourable Sergio Marchi
House of Commons
Ottawa, Ontario
K1H 0A6

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Aggie Busckman
Address: 204 1536
Yellowknife NWT
X1A 2T2.

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Cathy Buhagiar Cathy Buhagiar

Address: 9039 Nictaux, RR H 3 Middleton
N.S. B05 1P0

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd - ECU - DOE

MAR 25 1996

Rec'd - UCM - MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Paul Bhagiar BUHAGIAR

Address: 9039 Notaux Rt #3 Middleton

U.S. Box 140

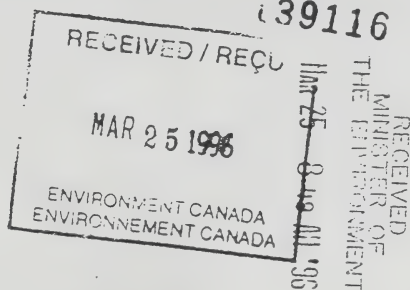
Dept.

March 22, 1996
Rec'd-DCU-DOE

MAR 28 1996

Joanne Bullen
840 Batory Ave,
Pickering, Ont.
L1W 2W6
0-1025-31

The Honourable Sergio Marchi
Minister of the Environment,
Terrasses de la Chaudière,
10 Wellington St.,
Ottawa, Quebec K1A 0H3



Dear Mr. Marchi,

Re: CANADIAN ENVIRONMENTAL PROTECTION ACT

We need - POLLUTION PREVENTION
- REGULATION FOR
STORAGE OF TOXIC WASTE

We are - ENDANGERED NOW!!

What will our Earth be like 5
years from now - LET ALONE 50
YEARS FROM NOW!!

PLEASE TAKE A
STAND NOW!!

Yours Sincerely,
Joanne Bullen

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Condy Bushell

Address: Box 445

Kingston, NS

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Cathy Cameron

Address:

146 Spedina Ave

OH. Ont K1Y 2C3



Dept. Insp.

March 22, 1996

RECEIVED / RECU

MAR 26 1996

ENVIRONMENT CANADA
MINISTERE DE L'ENVIRONNEMENT

139128

Honourable Sergio Marchi
Minister of Environment
Environment Canada
Room 509-S, Centre Block
House of Commons
Ottawa, Ontario K1A 0H3

Rec'd - DCU - DOE

MAR 28 1996

Requ - UCM - MDE

0-1025-31

Dear Minister:

Re: The Government Response to the Canadian Environmental Protection Act Review

The Canadian Association of Petroleum Producers (CAPP), appreciates the opportunity to review and comment on the document entitled "CEPA Review: The Government Response - Environmental Protection Legislation Designed for the Future - A Renewed CEPA". Environment Canada is commended for its consultative efforts on this matter.

CAPP believes that the government response to the CEPA review is an improvement over previous recommendations. We are greatly encouraged by Environment Canada's progress towards renewing CEPA in a manner which acknowledges and supports the concept of sustainable development.

CAPP's comments are attached and reflect specific concerns related to the Government Response. As well, and for the record, CAPP supports submissions by both the Canadian Chemical Producers Association (dated February 23, 1996) and the Canadian Petroleum Products Institute (dated March 11, 1996).

In summary, CAPP believes that the Government is on the right track as it moves forward with its CEPA review. We encourage you and your staff to consider Industry comments carefully as the Government moves to finalize a practical, cost-effective legislative framework for managing environmental protection in Canada.

Sincerely,



David J. Manning
President

cc: Honourable Anne McLellan, Minister, Natural Resources Canada
Honourable David Dingwall, Minister, Health Canada
Honourable John Manley, Minister, Industry Canada
Honourable David Anderson, Minister, Transport Canada
Honourable Paul Martin, Minister, Finance Canada
Honourable Art Eggleton, Minister, International Trade
Marjory Loveys, Policy Advisor, Prime Minister's Office

CANADIAN ASSOCIATION OF PETROLEUM PRODUCERS' COMMENTS ON THE GOVERNMENT RESPONSE TO THE CANADIAN ENVIRONMENTAL PROTECTION ACT REVIEW

General

CAPP is supportive of both the tone and the content of the Government's response to the Parliamentary Committee report on the CEPA review. We do have some specific concerns, but believe these can be readily addressed. Our overall response is positively influenced by the inclusion of the concept of Sustainable Development throughout the Report. CAPP believes the Government is attempting to allow a renewed CEPA to balance the complex interdependencies of environmental, economic and social issues in a responsible manner. We also strongly support the Government's comments on the role of science and risk assessment; the incorporation of the Toxic Substances Management Policy; and the adoption of the definition of the precautionary principle developed in Rio de Janeiro.

Our major concerns include the provision of civil suits; numerous proposals for various administrative reporting requirements (which we find burdensome and not likely to improve the environment); the definition of pollution prevention; and the proposed inclusion of climate change issues in CEPA. Detailed comments on these issues were made in our previous submission, dated August 14, 1995.

CAPP is not in favour of holding another multi-stakeholder conference or workshop to discuss the path forward for CEPA; we believe sufficient time and energies have been spent already. We recommend the Government act on the comments received, and in this context wish to specifically state our support of most of the comments sent in by the Canadian Chemical Producers Association (CCPA), dated February 23, 1996 and the Canadian Petroleum Products Institute (CPPI), dated March 11, 1996. CAPP's specific comments are set out below, and serve to emphasize our views on comments expressed in the CCPA and CPPI submissions, reflect CAPP views which diverge from the CCPA and CPPI submissions, or identify concerns which are not addressed in the CCPA and CPPI submissions.

Chapter 1 -- Guiding Principles

CAPP concurs with and supports the detailed comments provided by CPPI on Chapter 1 of the Government's response document. In addition to the CPPI comments CAPP makes the following comments and suggestions.

Section 1.5

CAPP is pleased to see and supports the clear statement by the Federal Government that it considers cooperation among the various levels of government in Canada to be essential in order to eliminate duplication and overlap. This cooperative approach is fundamental to successfully harmonizing the many overlapping regulations and jurisdictions in Canada. CAPP has consistently expressed support for harmonization within the CCME process. We encourage you and your officials to examine and support all practical avenues to further the harmonization process of CCME.

Sections 1.6 and 1.7

CAPP strongly supports the Government's statement that science is an integral part of decision making under CEPA. Although the preamble states that the Government is committed to a risk-based approach to decision-making, mention of this concept has been excluded from both sections 1.6 and 1.7. CAPP feels that a scientific, risk-based approach is an important component of the precautionary principle and fundamental to responsible decision-making. Therefore, this concept needs to be stated explicitly in both 1.6 and 1.7 and incorporated into any future process.

Chapter 4: Ecosystem Science and Natural Norms

CAPP supports the ecosystem approach to managing environmental issues. Clearly, for this approach to be effective, the government must ensure policies and programs are coordinated with other federal departments and with the provinces and territories. This is best accomplished by pursuing harmonization initiatives such as proposed by the CCME.

CAPP believes that ecosystem management is a provincial/territorial responsibility, except on federal lands. The federal government must ensure that CEPA recognizes provincial/territorial jurisdictions when embracing the ecosystem approach.

Section 4.3

CAPP supports including the National Pollutant Release Inventory (NPRI) within CEPA. However, it is important to recognize that the NPRI is a product of multi-stakeholder consultation and any attempts to modify the NPRI should be dealt with through a similar process of broad consultation. CAPP has expressed concerns that Environment Canada has already effected changes to NPRI without adequate consultation. We are therefore pleased to see a

commitment to use the multi-stakeholder consultation process to address further changes to the NPRI.

CAPP is of the view that NPRI should be used as a tool to gather data only where information is readily available or where there are no other mechanisms in place to collect the information. CAPP is most concerned that this does not become an even greater administrative and financial burden to industry.

Chapter 6: Pollution Prevention

Section 6.2

CAPP supports a strengthened focus on pollution prevention -- that is, avoiding and/or minimizing the creation of pollutants. However, Chapter 6 does not include recycling and reuse within the definition of pollution prevention. We believe that reuse and recycling should be recognized as valid and important pollution prevention techniques, and not seen as only complementary methods which may be used in support of pollution prevention practices. There are many examples where recycling and reuse schemes currently in use within Canadian industry have proven to be very effective pollution prevention methods. CAPP recommends that the definition of pollution prevention be modified to include reuse and recycling.

Section 6.17

CAPP supports a harmonized approach to the management of reporting spills, leaks and other like incidents where multiple jurisdictions are involved. It is imperative that responsible regulatory agencies are identified and a one window reporting system is established. CAPP recommends that spill reporting guidelines be harmonized across federal, provincial and territorial jurisdictions.

Chapter 8: Controlling Pollution and Wastes

Section 8.1

This section recommends including greenhouse gases and the climate change issue within Part V of CEPA. CAPP does not support the inclusion of climate change and greenhouse gases (GHG), within CEPA. This is being managed under a separate voluntary initiative, The Voluntary Challenge Registry (VCR). Including the management of GHG's under CEPA could jeopardize the VCR management approach.

There is no doubt that the climate change issue is a global or international debate and is much broader than the CEPA mandate. Greenhouse gas emissions, and their possible link to global climate change, have an impact on many government departments within all levels of government. The climate change issue, and Canada's commitments under the international Framework Convention on Climate Change, have an impact that is not only environmental but can also significantly affect the nation's economic performance and our social structure. The approach suggested in Section 8.1 should be dropped as there are already mechanisms in place to deal with GHG reduction.

Reduction of Hazardous Wastes and Non-hazardous Wastes

Section 8.12

Definitions of hazardous waste vary from province to province and also vary with those of the United States. This creates confusion regarding the rules for export of wastes.

We strongly recommend that the definition of hazardous wastes should be harmonized across the provinces. Also, we strongly support the intention to harmonize interprovincial movements of hazardous wastes.

Non-Hazardous Solid Wastes

Sections 8.18 and 8.19

These sections would give the Government of Canada the authority to control import and export of non-hazardous wastes. Controls would add to the administrative burden for managing non-hazardous waste and may deter establishment of economical and environmentally sound waste management businesses. Further, provinces that already have administrative processes and facilities in place, should retain control over the import and export of non-hazardous waste.

Interprovincial/Territorial Movements of Hazardous Wastes

Section 8.20

Under this section, CEPA would provide for the authority to regulate interprovincial movements of hazardous wastes that currently resides in the Transportation of Dangerous Goods Act. The intent is to help eliminate internal barriers to trade within Canada.

We are supportive of this Section and believe priority should be given to harmonization of hazardous waste definitions and interprovincial trade.

National Standards for Fuels

Section 8.6

This section would allow the Minister of Environment to request a ban on "*fuels and fuel ingredients*" exports for environmental or health reasons.

This section is intended to cover motor vehicle fuels. However, we are concerned that the language used might allow interpretation for a wider span of fuels including propane and natural gas. We suggest that the:

- concept of "based on principles of science and economics" should be included in Section 8.6.
- word "motor" or "motive" be used to modify "fuels".

Chapter 9: Controlling Toxic Substances

CAPP is concerned that several of the recommendations contained in Chapter 9 call for the incorporation of certain elements of the Toxic Substances Management Plan (TSMP) into CEPA. CAPP believes that this has a significant potential to change the direction of the TSMP which was developed through a broad multi-stakeholder process. Rather, any changes to CEPA should embrace the TSMP as the appropriate basis for controlling toxic substances through CEPA.

Section 9.5

Section 9.5 seems to call for duplication or a repeat of a process already carried out. TSMP was developed through a broad multi-stakeholder process. Therefore it is unclear why further consultation would be required or why it would lead to a need to amend Section 11 in the manner suggested.

Page 1515

Peter D. Carter
401-1669 Victoria Street
Prince George, British Columbia
V2L 2L5 (604) 563-6417

March 21, 1996

~~Rec'd - DCU - DOE~~

The Honourable Sergio Marchi
Minister of the Environment
Terrasses de la Chaudière
10 Wellington Street
Hull, Québec K1A 0H3

MAR 28 1996

Rec'd - UCM - MDE

0-1025-31

139121

Dear Sir:

I write regarding proposed reforms to the CANADIAN ENVIRONMENTAL PROTECTION ACT (CEPA).

I include extracts from my letter of October 6, 1991 for the Federal Pesticide Registration Review,

In the few years since I wrote the above, the public's concern over toxic anthropogenic substances in the environment including air, food and water has been increasing. The expert medical literature has reported links between

- pesticides and Parkinsons disease
- pesticides and organochlorines and breast cancer
- organochlorines and bladder cancer
- dioxins and immune suppression and endometriosis as well as cancer
- aluminium and Alzheimer's disease
- fine and micro fine ambient air particulates and respiratory and

cardiovascular diseases and mortality at levels found in many Canadian towns and cities.

Just last month a combined expert statement from the U.K. was issued on the link between

- pesticides and declining male fertility and also testicular cancer.

All of these I can remember from the medical journals that come to my office. As I am aware that the amount of medical research being done on these issues is greatly limited by lack of funding, It is clear that toxics have been and are affecting the public health a lot more than the producers of these substances and the governmental regulating agencies had acknowledged was possible.

For this reason as well as the ever increasing number of potential toxics being produced, it is necessary for CEPA to be reformed and strengthened. This is one area where more government is not only good but essential government.

I include excerpts from Implications of Global Change for Human Health by The Royal Society of Canada 1995. I am expecting that you have studied the full document and will be working to apply the recommendations.

The following reports were issued from the Federal Government in 1995:

- Pollution Prevention A Federal Strategy for Action
- Chlorinated Substances Action Plan
- Federal Action Program on Climate Change
- Toxic Substances management Policy
- Replenishing the Ozone Layer

These were all necessary and well researched documents. They all contained, in my view, the minimum requirements in the form of plans and recommendations on the issues. I ask you to make sure at the least that all of these are implemented.

There is need for much more Government funded research into these issues.

There is also need for more reporting monitoring and inventories of toxics and potential toxics.

The Federal Pollutant Inventory now needs to be expanded and must include herbicides and pesticides.

Data nationally on disease incidences by region subregion and age categories needs to be compiled and reported regularly.

Biodiversity needs to be recorded regionally by suitable ecological indices, and natural biodiversity needs to be legally protected. Canada should implement an endangered species act.

Stringent requirements should be applied to the new industry of biotechnology. Public participation should be a part of permits for the cautious development of these products. In keeping with the public's opinion, bovine somatotrophin, for example, should not be permitted in Canada. The public must not be unwilling guinea pigs for new biotechnology products unless it can be shown that such products are in fact safe and necessary to maintain public health.

There must be regular international high level meetings on water and air pollution, climate change, toxic waste and environmental health effects.

There are a number of proven toxics for which alternatives are available. It is time to order the phasing out of these substances. The production of alternatives would be environmentally and economically beneficial.

Ambient air standards as safe and desirable levels need to be set. Vehicle emission standards need to be set to meet the projected needs for healthy air and prevention of climate change.

Planned progressive legislation and economic incentives are urgently needed to arrest and reverse chemical pollution of waterways.

CEPA to be effective must allow for and enable public participation. With contemporary communications this can be facilitated in a cost effective way.

CEPA must enshrine the "polluter pays" principle. This may be accomplished in part by mandatory environmental insurance policies. Economic incentives for improved pollution monitoring and control and for the development of non toxic alternatives (technology and products) can be complementary to matching legislation.

Environmental NGO's can and do perform a valuable job as public watchdogs, and should receive funding for communications equipment and accessing information, i.e. just the right to access environmental information is not enough.

The public should have the right and be enabled to sue both companies and individuals for environmental damage.

Yours truly,



Peter D. Carter, M.D.

Director, Canadian Association of Physicians for the Environment (CAPE)

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Sept. resp.

Rec'd-DCU-DOE

MAR 19 1996

Requ-UCM-MDE

March 14, 1996

The Honourable Sergio Marchi, P.C., M.P.
Minister of the Environment
Environment Canada
Terrasses de la Chaudière
10 Wellington Street
Hull QC K1A 0H3

138820

0-1025-1

The Honourable David Dingwall, P.C., M.P.
Minister of Health
Health Canada
Brooke Claxton Building
16h Floor
Tunney's Pasture
Ottawa ON K1A 0K9

Dear Ministers:

RE: Government Response to the CEPA Review

The National Environmental Law Section (NELS) of the Canadian Bar Association presented a brief to the Standing Committee on Environment and Sustainable Development in December 1994, making 42 specific recommendations to improve the *Canadian Environmental Protection Act*. The June 1995 report of the Standing Committee, *It's About our Health! Towards Pollution Prevention* commented on many of the recommendations presented by NELS.

In reviewing the Government response to the Standing Committee report, *Environmental Protection Legislation Designed for the Future - a Renewed CEPA* (December 1995), NELS was pleased to note that many of its recommendations had been targeted for implementation, whether through legislative changes to *CEPA* or non-legislative means.

NELS is pleased to make the following comments on the Government's response:



Science and the Precautionary Principle (page 15)

The UNCED definition of the precautionary principle uses the words "cost effective" in the definition of this principle (postponing "cost effective" measures to prevent environmental degradation). NELS recommends deleting the words "cost effective". While cost effective measures are a concern, it provides the avenue to completely undermine this fundamental guiding principle. It should be noted that Nova Scotia has left out these words in section 2(b)(ii) of its new *Environment Act*, S.N.S. 1994-95, c.1 (January 1995).

Equivalency and Administrative Agreements (pages 17-18)

In its brief to the Standing Committee, NELS recommended that criteria be established by Environment Canada, with public input, before any equivalency and administrative agreements are negotiated. (*Recommendation 25*) This is not listed in the Government response (Comments 2.5 - 2.8). NELS believes there should be a commitment to do this.

Reporting (page 21)

NELS believes that there should be a five year review of *CEPA*, not seven years as proposed in the Government response.

Public Registry (page 24)

NELS believes that the establishment of this registry should be enshrined in the legislation rather than being a policy decision. In our view, policies can too easily be changed and public access to environmental information will suffer.

Right to Request an Investigation (page 25)

Section 108 of *CEPA* should be amended to delete the requirements that (i) two person, (ii) resident in Canada, (iii) who are 18 years old can request a formal investigation under the *Act*. Since 1988 there have been few signs of abuse of this Section. Any intelligent 12 year old (resident or non-resident) who sees crimes being committed to the environment in Canada should have the right to make a formal request for an investigation. Nova Scotia removed these restrictions in January 1995, when it enacted its new *Environment Act* (see section 115).



Right to Sue (page 26)

NELS does not see why a remedy cannot be provided in the legislation to allow a member of the public to sue in situations where they have suffered loss or damage as a result of an activity which is permitted under the *Act* or regulations. The preliminary steps detailed by the Standing Committee, together with a cap on the monetary limit on the damages which can be sought, should provide the necessary checks and balances to this right.

Civil Remedy for Environmental Risk (page 27)

NELS encourages the Government to provide a civil remedy for the creation of an environmental risk. While this remedy may indeed deviate from Canada's common law convention on civil liability, it is being provided by many of the provinces in their environmental legislation. See, for example, section 207 of the Alberta *Environmental Protection and Enhancement Act* and section 142 of the Nova Scotia *Environment Act*. The response that the Government will take this recommendation "under advisement" is not acceptable, in our view.

Right to Prosecute (page 27)

NELS believes that a citizen's right to undertake a private prosecution should not require the consent of the Attorney General.

Other Public Rights (page 28)

The Government's undertaking only to "receive comments" on the public's right to file notices of objections, request review of approvals and regulations, and provide intervenor funding for appearances before Boards of Review reflects a lack of Government commitment to these very important issues.

Enforcement (Chapter 5)

NELS recommended to the Standing Committee that an amended *CEPA* should provide measures to encourage voluntary compliance, as well as creating new enforcement options such as administrative monetary penalties, negotiated settlements and ticketing. (*Recommendation 30*) One example is to promote companies to have voluntary site assessments/audits done on their properties, share this information with the regulators and provide some limited immunity from using the assessment/audit in a subsequent prosecution. While there are statements on this topic in the *CEPA Enforcement and Compliance Policy* (May 1988), NELS believes that this concept should be enshrined in



legislation. Individuals and corporations must be encouraged to identify and address their own environmental problems. If they act in good faith to do this, they should not be penalized. The Government response overlooks the voluntary compliance approach. With resource cutbacks in government, this approach needs to be encouraged and promoted.

Reporting of Spills, Leaks and Other Such Incidents (page 49)

NELS also recommended that federal spill reporting regulations be enacted. (*Recommendation 31*) The Government response makes no commitment to do this. Harmonized initiatives may be a long way off. In the meantime, there is a need for federal regulations to fill this void.

Biotechnology (pages 51-53)

The Government response focuses on the need to avoid duplication rather than the need to ensure that *CEPA* is comprehensive and can therefore address the full scope of regulatory issues concerning biotechnology. In our view, the Government should accept the Standing Committee's recommendation to develop national standards to regulate biotechnology environmental effects. A piecemeal regulatory scheme to cover only products that are not regulated under any other federal act is not acceptable.

Controlling Toxic Substances (Chapter 9)

The Government response focuses on the importance of establishing a structure to support and facilitate due process while the Standing Committee appears mainly concerned with the implementation of the precautionary approach.

The Standing Committee recommended that inherent toxicity of a substance be a criteria to consider when evaluating substances. Any substances banned or sunsetted in another Canadian province or OECD countries should automatically be banned or sunsetted in Canada. The Government has committed itself only to subjecting these substances to testing with a view to possibly regulating them in the future (page 69). NELS supports the Standing Committee approach.

The Standing Committee recommended that the public be given authority to file notices of objection when new substances were classified. The Government response rejects this idea (pages 71-72) because it would "thwart the rapid decision making process" in this area. NELS notes a ring of irony in this comment considering the Government has classified only 44 substances in the first five years of *CEPA*.

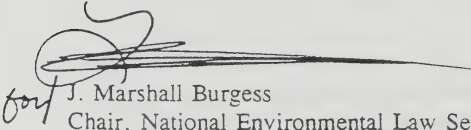


Conclusion

Overall, NELS is encouraged with the number of proposals that the Government has put forward, and applauds the efforts of the Minister of Environment and the Minister of Health in this regard.

The balancing act between environmental concerns and economic realities is one that all governments must deal with. Difficult decisions must be made. The Canadian Bar Association has stated its commitment to a clean and healthy environment and members of the National Environmental Law Section are prepared to support those with the same objective.

Yours very truly,


J. Marshall Burgess
Chair, National Environmental Law Section



Conclusion

Overall, NELS is encouraged with the number of proposals that the Government has put forward, and applauds the efforts of the Minister of Environment and the Minister of Health in this regard.

The balancing act between environmental concerns and economic realities is one that all governments must deal with. Difficult decisions must be made. The Canadian Bar Association has stated its commitment to a clean and healthy environment and members of the National Environmental Law Section are prepared to support those with the same objective.

Yours very truly,

A handwritten signature in dark ink, appearing to be 'J. Marshall Burgess', written over a horizontal line.

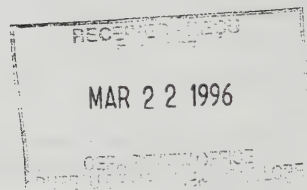
J. Marshall Burgess
Chair, National Environmental Law Section



**Canadian Conseil
Cement canadien
Council du ciment**

March 22, 1996

Ms. Ruth Wherry
Director, Intergovernmental and
Legislative Accountability, CEPA Office
351 St. Joseph Blvd.
Hull, Quebec
K1A 0H3



Dear Ms. Wherry:

The Canadian Cement Council (CCC) welcomes the opportunity to comment on the Government Response to the statutory review of the Canadian Environmental Protection Act (CEPA). We consider the review process an important opportunity to improve the efficiency and effectiveness of this legislation, and we will continue to work with the federal government to achieve this objective in a balanced and equitable manner.

Commitment to Environmental Protection

Cement manufacture is an energy intensive production process. However, emissions caused by the combustion of fossil fuels in cement production have declined steadily since 1974 due to investment in modern kiln technology and the use of different kiln fuels despite the fact that cement production has increased. This commitment to improve environmental performance through voluntary action is continuing. Two current initiatives are:

- participation in the Voluntary Challenge and Registry Program; and
- the development of a Code of Practice for the use of hazardous and non-hazardous wastes as supplementary fuel for cement kilns.

Issue of Concern in the Government Response – Cost

The Canadian Cement Council supports the process to improve CEPA. We are concerned however, that certain elements of the Government Response could add significant costs to the Canadian cement industry without necessarily improving environmental performance. The cement industry is a commodity business and an exporter, unprotected by tariffs or quotas, that competes primarily on price. Any cost increase that does not improve efficiency or direct environmental performance is a very inefficient investment.

Cost recovery

Despite considerable discussion throughout the CEPA review process, the Government Response fails to clarify the cost recovery issue. Although some examples of services which will be subject to cost recovery are listed, it does not clearly describe how, or by what criteria, such services will be identified. Section 2.17 proposes that CEPA be amended to allow for cost recovery "in every

instance that a service of a beneficial nature is being provided.” This proposal is too vague and must be clarified. Furthermore, similar statements associated with specific examples of cost recovery services do not adequately indicate who will be responsible for payment or how such responsibility may be divided among stakeholders (e.g. section 3.3).

More stringent reporting requirements

We are concerned that the vagueness of section 4.2 provides the Minister of the Environment with far-ranging powers with regard to the collection of information. This provision does not adequately limit the type of information which may be collected, nor the circumstances under which this information may be collected. As a result, industry may be forced to bear increased administrative costs necessary to generate such information.

Absence of substantive harmonization initiatives

While administrative and equivalency agreements are discussed, the Government Response fails to clearly indicate how a renewed CEPA could contribute to explicit national harmonization of environmental protection activities. Harmonizing the activities of federal and provincial environmental protection inspectors is an issue of specific concern, due to the added cost of complying with the requirements of similar, but separate inspection processes. The Government Response should address this issue and identify other practical means for achieving greater harmonization.

The Canadian Cement Council

The CCC represents the major cement producing companies across Canada and assists its members in participating in the formation of public policy, including the protection of the environment, international trade issues and the need for infrastructure renewal. The membership of the CCC includes: ESSROC Canada Inc., Lafarge Canada Inc., St. Lawrence Cement Inc., St. Marys Cement Corporation, Inland Cement Limited, Tilbury Cement Limited and North Star Cement Limited.

Thank you for the opportunity to comment on the Government Response to the CEPA review. The Canadian cement industry will work with the federal government to improve the efficiency and effectiveness of CEPA, and remains committed to improving the industry's environmental performance through innovative voluntary measures.

Sincerely,



Ken Whiting
Executive Director



THE CANADIAN CHAMBER OF COMMERCE

55 Metcalfe St., Suite 1160, Ottawa, Ontario K1P 6N4
Tel: (613) 238-4000 Telex: 053-3360 Fax: (613) 238-7643

139228

March 22, 1996

The Hon. Sergio Marchi, P.C., M.P.
Minister of the Environment
Terrasses de la Chaudiere
10 Wellington Street, 28th Floor
Ottawa, Ontario
K1A 0H3

REC'D-DCU-DOE

APR 1 1996

REC'D-UCM-MDE

0-1025-31

0-1076-26/C57

Dear Minister Marchi,

We would like to take this opportunity to comment on your recently-released document, *CEPA Review: The Government Response - Environmental Protection Legislation Designed for the Future - A Renewed CEPA*. The Canadian Chamber of Commerce is Canada's largest and most representative business association. It speaks for more than 170,000 Canadian companies through its network of more than five hundred local chambers of commerce and boards of trade.

The Canadian Environmental Protection Act (CEPA) is a very important part of the environmental legislative framework of our country. It encompasses many policy areas and has a major impact on businesses in almost every sector. The Canadian Chamber is generally pleased with the direction that the Government is proposing to go with the updating of this legislation. We believe that this Response provides a sound base for the public consultation process leading up to legislation amending CEPA.

Although overall, we are pleased with the Government Response, the Chamber does have a number of concerns with certain aspects of the report.

Sustainable Development

The Chamber recommends that sustainable development be set as a cornerstone of a renewed Canadian Environmental Protection Act.

The Canadian Chamber, through its Environment Committee, has voiced its commitment to the principles and application of sustainable development. As well, we have been actively involved with other business groups in developing guidelines and action plans which will help us to attain truly sustainable development.

Accordingly, we were very pleased to note that the Government supports making sustainable development the overarching policy goal of a renewed Canadian Environmental Protection Act. Making this a cornerstone of the regulations enables decisions to be made which will respect both the

environmental concerns of Canadians and the economic costs and benefits associated with various courses of action.

We were very pleased as well with the Government's intention to include in the Preamble a reference to "the interrelationship of economic and environmental principles and acknowledge the role of such economic considerations as the benefit-cost approach and flexible decision-making." This strengthens even more the support for sustainable development. Unfortunately, reference to the economic aspects of sustainable development did not tend to carry through the rest of the document. We hope that this absence will be dealt with in the new legislation.

Cost Recovery

The Chamber recommends that, when introducing or substantially increasing the level of cost recovery for particular services, the cost of providing those services must be reduced to the maximum extent possible.

Furthermore, we recommend that cost recovery fees charged to businesses not be greater than the direct cost of providing the services rendered - other fees and charges which may be designed to recover indirect service costs and/or excess economic rents really are taxes, and should be administered separately from direct cost recovery fees.

As we indicated on August 8th, 1995 in a letter to the Honourable Arthur Eggleton, then President of the Treasury Board, the Chamber supports the principle of cost recovery for federal government programmes and services. The introduction of user fees which reflect underlying costs can reduce the excess demand for services and can contribute to improved economic efficiency of government operations.

However, we also indicated our concern that excessive or poorly designed user charges can be extremely harmful to individual businesses and to the economy as a whole. The most serious concern of business is that departments may be increasing user charges in order to offset budget reductions without first taking steps which are needed to streamline operations and to reduce costs as much as possible. This concern arises especially in those cases where departments are in a "monopoly" position, able to dictate both the level of user fees charged and the level of services which firms must purchase if they are to continue doing business in Canada.

Pollution Prevention

The Chamber recommends a performance-oriented approach to pollution prevention rather than a prescriptive, regulatory approach.

Furthermore, we recommend that the definition of pollution prevention not be entrenched into a renewed CEPA until all stakeholders have come to a consensus on elements that it should contain.

The Canadian Chamber supports the concept of Pollution Prevention. However, we take exception to using the definition of pollution prevention that was included in the strategy document, *Pollution Prevention - A Federal Strategy for Action*. This is a strategy that has not gained consensus among stakeholders and the proposal to roll this into the CEPA legislation is not acceptable.

One issue with the definition that deeply concerns our membership is that it does not consider off-site recycling to be a part of pollution prevention. We believe that whether the recycling is done on- or off-site should make no practical difference with respect to the law - the end result should be all that matters.

The desire to create a pollution prevention plan for all Schedule 1 substances embedded within the Act creates a very invasive position that reflects a prescriptive approach rather than a performance-oriented approach which we believe is much more appropriate. As well, the issue of federal versus provincial authority is not dealt with satisfactorily and the approach suggested appears to go against the goals of harmonization to which the federal government has committed itself.

If pollution prevention is implemented by regulation, the regulations will define a minimum standard that all companies will meet but few will surpass. Instead, a regime should be put in place that would reward those companies that practice pollution prevention. This would encourage innovation and new ways of accomplishing the goals of avoiding and/or minimizing the creation of pollutants and wastes rather than trying to manage them or clean them up after they have been created.

The Chamber believes that voluntary measures are the most effective way of achieving these goals. Instead of regulating the method, let Canadian business find innovative ways to achieve the desired targets. Pollution prevention is very strategic and a new way of thinking - do not let the old way of thinking discourage innovation.

Biotechnology

The Chamber recommends that the compliance costs for the regulatory process of biotechnology be kept realistic.

Furthermore, we recommend that the Government avoid introducing regulatory systems that are so onerous that

they inhibit or prevent beneficial industrial development

Biotechnology is a fast-moving field and regulatory agencies are hard pressed to keep up with the pace of development of new products with regulations that meet health and safety standards without avoiding the introduction of regulatory systems that are so onerous that they inhibit or prevent beneficial industrial development. The challenge for Canadian companies is to stay abreast of the changing regulatory landscape in Canada and relevant foreign markets in order to remain at least as effective as their competitors in satisfying the regulatory requirements.

Accordingly, the Chamber agrees that CEPA is not the appropriate place to regulate the biotechnology industry and that it serve only as a "safety net" for those instances where another Act of Parliament does not currently apply. We would not support moving any authority beyond that from other departments, such as Agriculture Canada, to Environment Canada.

Toxic Substance Management

The Chamber recommends using the "risk assessment" method of toxicity determination, rather than the "hazard assessment" method.

We were pleased to see that the Government did not choose to follow the recommendations of the Committee in changing from a "risk assessment" method of toxicity determination to a "hazard assessment" method. We agree that the best course to follow is by working with and improving upon the *Toxic Substances Management Policy* that the Government announced last summer.

We are concerned, however, with instances within the text where "inherent toxicity" is referred to, such as in points 9.1(i) and 9.5. It is hoped that the presence of these words are not intended to indicate a shift toward the "hazard assessment" method of toxic determination which would be completely unacceptable. We would hope that these words are not included in any legislation.

Harmonization with Other International Jurisdictions

The Chamber recommends that there be one list of existing chemicals free from registration requirements at least within the North American trading block.

Furthermore, we recommend that a tripartite task force be established with the objective of harmonizing CEPA and TSCA regulations, along with a proposal for chemical regulations for Mexico and other countries that may be included in NAFTA in the future.

CEPA currently has the most restrictive set of new chemical regulations in the world. Despite the fact that it draws heavily on the U.S. Toxic Substance Control Act (TSCA) and Euro EINECS for its key principles, the small size of Canada's existing chemical inventory means that many more chemicals are subject to registration in Canada versus the U.S. or Europe.

The implications of the significantly more restrictive Canadian inventory to Canadian businesses are far reaching and will cause Canadian businesses to lose their competitive edge in the international marketplace. For example, the easier access to new chemical technology by U.S. companies will create a competitive advantage for them as they battle for share of the U.S. and international markets.

Similarly, with respect to pollution prevention and waste minimization, access should be allowed to facilities throughout the North American market to allow for the most cost-effective and efficient use of the resources available.

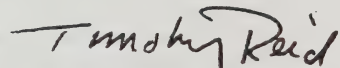
Conclusion

Overall, we believe that the tone and direction of the Government Response is quite acceptable to the business community and sets a good balance of protecting the environment and protecting the economic productivity of Canada.

We would be happy to meet with you or any of your officials to discuss the updating of the Canadian Environmental Protection Act.



Gary G. Campbell
Chairman of the Board



Timothy Reid
President

c.c. The Honourable David Dingwall, Minister of Health
The Honourable Anne McLellan, Minister of Natural Resources
The Honourable John Manley, Minister of Industry
The Honourable Paul Martin, Minister of Finance
The Honourable Lloyd Axworthy, Minister of Foreign Affairs
The Honourable Marcel Massé, President of the Treasury Board
Mel Cappe, Deputy Minister, Environment Canada

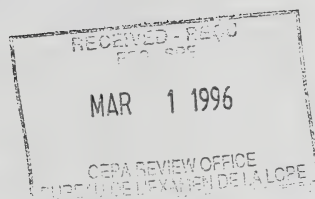
The
Canadian
Chemical
Producers'
Association

Office of the
President

Suite 805
350 Sparks Street
Ottawa K1R 7S8

February 23, 1996

The Honourable Sergio Marchi, P.C., M.P.
Minister of the Environment
Les Terrasses de la Chaudière
10 Wellington Street
Hull, Québec K1A 0H3



Dear Minister:

Attached please find CCPA's submission on the "CEPA Review: The Government Response". CCPA believes that having the right environmental framework legislation for Canada is important from both an environmental and an economic perspective. We have participated extensively in the CEPA Review process and this is our third major submission on this issue.

In this submission and in our previous two briefs on the CEPA Review, CCPA has addressed the CEPA Review issues based on our Responsible Care® principles and on the need to maintain a competitive chemical industry that can continue to grow and contribute to Canadian jobs and wealth. We see these concepts as complementary. The renewed CEPA also needs to be based on this sustainable development approach.

As we have previously stated to you, we believe that the Government Response generally provides a sound basis for the public consultation process that will lead to amending CEPA. In this letter we highlight to you key positive aspects of the Government Response that we support in our submission. There are, however, a number of areas where the public consultation process needs to result in improvements to the government's proposals to amending CEPA. We highlight these areas in this letter, listing them under "Recommendations Raising Serious Concerns" (where we urge that the government reconsider its basic approach to certain issues) and under "Recommendations Requiring Constructive Enhancement" (where we recommend improvements in how the government achieves objectives which we support in amending CEPA).



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RECOMMENDATIONS THAT CCPA SUPPORTS

- the concept of sustainable development is not only recognized in the Response, it is also generally implemented throughout in most of the recommendations
- overall the Response strikes the right tone of integrating economic and environmental considerations in a way that belays the significant concerns raised in the business community (and their potential for negative impact on investment) that resulted from the tone, excesses and impractical recommendations that were part of the Parliamentary Committee Report
- the role of voluntary initiatives and economic instruments as complements to good regulations in achieving environmental protection is clearly recognized and supported
- the Response specifically recognizes the contribution ARET has made to environmental improvement and should set the stage for the government to start using ARET as a cornerstone for the government's environmental agenda
- the role of science and economics in decision making in CEPA is reenforced
- the Toxics Substances Management Policy and the approach to risk assessment as currently reflected in Section 11 of CEPA are recognized as the foundation for the government's approach to toxic chemicals
- the precautionary principle as defined in Principle 15 of the Rio Declaration is incorporated as a part of the risk based approach the Government Response adopts
- the need for continuous environmental performance improvement is stressed in the context of moving forward, recognizing that we have already made significant headway
- the increasing globalization of many environmental issues is recognized
- the role of MIACC in the development and implementation of emergency response and preparedness measures is appropriately recognized and supported
- the provisions in the Response generally set a tone of partnership in terms of working with the provinces to rationalize and harmonize the federal and provincial environmental management framework

RECOMMENDATIONS RAISING SERIOUS CONCERNS

- constraints are required for the cost recovery proposals such as recognizing international competitiveness implications; also CEPA should adopt cost recovery principles which have been recommended by industry
- the proposed "right to sue" provisions are unnecessary and contrary to the principle that elected representatives, and not the courts, should be responsible for making decisions about protection of the environment and balancing social, economic and environmental interests

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- it needs to be clarified that information to substantiate confidentiality claims needs to be provided when claims are challenged, and not up front automatically
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- CCPA objects to current National Energy Board provisions controlling fuel exports being extended to additives
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- CCPA objects to the overly interventionist and duplicative role proposed for the federal government in the hazardous and non-hazardous waste areas and to the concept of Canadian self-sufficiency in waste management

RECOMMENDATIONS REQUIRING CONSTRUCTIVE ENHANCEMENT

- it is appropriate to promote bio-diversity in the Preamble of the Act, but premature to incorporate a definition into the legislation
- it is premature to consider incorporating a "user/producer responsibility" principle into the Act until this is better understood and accepted internationally
- the requirements for a periodic review of CEPA should be optional (not mandatory), considered at 10 (not 7) year intervals and generally provide for an incremental or focused review and not a major rewrite
- more protection and safeguards are required re proposed information gathering provisions
- the proposed model pollution prevention plans are overly prescriptive and should be more clearly seen as guidelines and not as requirements
- there is a need to more clearly determine the government's objectives in tracking progress on pollution prevention and consider alternatives to using NPRI for meeting those objectives
- cost recovery and "significant new use" provisions for new substances should not be considered for incorporation into CEPA until after the 1997 New Substance Notification Provisions review
- CCPA supports proposals for adding authority to require additional testing to conduct PSL assessments, but with certain conditions as we recommend

We would also like to emphasize the linkages between the CEPA Review and the CCME Environmental Management Framework Agreement initiative which needs to be finalized and implemented as a basis for sorting out federal and provincial roles and responsibilities. This is an essential prerequisite and complement for the CEPA Review if it is to provide for the predictability and certainty that investors require.

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We look forward to meeting with you and your officials, at an early opportunity, to discuss our recommendations as spelled out above and as spelled out in more detail in our attached brief.

We believe that many of the recommendations in our submission and our analysis of the Government Response will be of interest to your colleagues in other ministries and we will be sending our comments to your colleague Ministers as copied below.

Yours truly,



Jean M. Bélanger

c.c.: The Honourable David Dingwall, Minister of Health
The Honourable Anne McLellan, Minister of Natural Resources
The Honourable John Manley, Minister of Industry
The Honourable Paul Martin, Minister of Finance
The Honourable Lloyd Axworthy, Minister of Foreign Affairs
The Honourable Marcel Massé, Treasury Board
Mel Cappe, Deputy Minister, Environment Canada

JMB/glm

The
Canadian
Chemical
Producers'
Association

SUBMISSION ON

**“CEPA REVIEW:
THE GOVERNMENT RESPONSE”**

February 1996



Responsible Care: A Total Commitment®

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* ATTACHMENTS

1. December 1995 Media Backgrounder on Government Response
2. ICCA Risk Principles Paper
3. Industry Principles on Cost Recovery and Government Response
4. November 1993 letter, "CBI Claims & Resource Constraints: The Case Against 'Up Front' Substantiations"

* These attachments are not provided with all copies of this brief and if you wish to obtain them, please contact CCPA attention Glenda Murray.

CCPA SUBMISSION ON "CEPA REVIEW: THE GOVERNMENT RESPONSE"

INTRODUCTION:

CCPA has extensively participated in the CEPA Review process. For CCPA, having the right environmental framework legislation for Canada is important from both an environmental and an economic perspective. As CCPA recently outlined to the House of Commons Standing Committee on Finance in presenting our views on sustainable development, we believe that a healthy Canada is one in which there is continuous improvement in environmental performance providing quality living and maintaining healthy ecosystems. It is also a Canada that is competitive and attracts investment to create jobs and wealth. Acting on these objectives together, as complementary ideas, will be the key to economic and environmental success for companies, governments and citizens. CEPA needs to provide an appropriate framework for meeting these challenges.

This submission is CCPA's third formal brief as part of the CEPA Review process. In September 1994, CCPA filed an extensive brief to the Parliamentary Committee on its review of CEPA and CCPA representatives also appeared before the Committee three times as witnesses. In July of 1995, CCPA provided an extensive brief on the Committee's Report.

In all our submissions, CCPA has addressed the CEPA Review issues within the context of certain underlying premisses. These are based on Responsible Care®, our environmental stewardship initiative, and on the need to maintain a competitive chemical industry that can continue to grow and contribute to Canadian jobs and wealth. These premisses are:

- economic and environmental objectives can and must be integrated within CEPA
- further and continuous improvement in environmental protection is required, building on past success
- science based, risk based and economic based decision making must underpin sound chemical management, and environmental protection generally
- it is strategically important, in terms of supporting Canadian investment and competitiveness, to be able to use responsible voluntary actions to achieve environmental goals, leaving regulations to address the issues where voluntary actions do not work to achieve those goals
- international cooperation is increasingly important in providing for sound chemicals management and environmental protection

- cost constraints on industry, government and society call for integrating environmental and economic considerations in setting priorities in order to maximize public and environmental protection for the resources available
- the federal government needs to work with the provinces in partnership to rationalize and harmonize the federal and provincial environmental management framework
- Canada has developed, over time, an effective mix of sustainable development environmental policies. In renewing CEPA, we need to build on these in a way that provides consistency and predictability.

These fundamental premiss provide a context for our overall input into the CEPA Review process and for our specific comments which follow on the Government Response to the Parliamentary Committee Report on the CEPA Review.

PART I: Overview

The CCPA generally supports the Government Response to the Parliamentary Committee Report on the CEPA Review, but as spelled out below we also make a number of recommendations as to how many of the proposals in the Government Response need to be improved.

One area where CCPA believes that the Government Response is flawed and needs to be substantially revised is with respect to recommendations contained in Chapter 8 concerning management of hazardous and nonhazardous wastes. Also an area of potential serious concern arises with respect to the recommendations in Chapter 4 regarding confidentiality. Hopefully this is merely a matter of clarifying that what is being recommended are provisions for companies to substantiate confidentiality claims if challenged. However if the intention is to require up front substantiation as a condition of filing a confidentiality claim, this will be seen as a serious flaw in the Response for reasons discussed in more detail below. An additional key concern is to ensure that reuse and recycling are included in promoting pollution prevention under CEPA. Recommendations with respect to cost recovery, certain enforcement provisions and the creation of unnecessary "Right to Sue" provisions also raise serious concerns.

In these and in a number of other areas discussed below, CCPA expects the public consultation process will result in improvements to the government's approach to amending CEPA compared to what is proposed in the Government Response. Generally, however, we believe that the Response provides a sound basis for the public consultation process that will lead to amending CEPA. While tough, the Response avoids many of the excesses and impractical recommendations that were the basis for the Parliamentary Committee Report.

CCPA's initial review of the Government Response was also positive as set out in the December 1995 Media Backgrounder, **Attachment 1**, which was released at the time the Government Response was issued. In that Backgrounder, CCPA stated:

From our preliminary assessment, the Government Response seems to be on track in a number of areas including promoting sustainable development, incorporating the precautionary principle as part of a risk based approach to chemical management, reenforcing the role of science and economics in decision making, and recognizing the increasing globalization of many environmental issues. Most important, while the Response calls for continuous environmental improvement, it does so in the context of acknowledging that we are moving forward and that we have already made significant headway.

Further analysis of the Government Response supports our initial conclusion that overall, it appropriately builds on the effective mix of sustainable development environmental policies that Canada has developed over time and also takes a significant step forward in recognizing the potential for greater use of responsible voluntary measures.

RECOMMENDATIONS THAT WE SUPPORT

Positive aspects of the Government Response that CCPA would particularly like to support include:

- the concept of sustainable development is not only recognized in the Response, it is also generally implemented throughout in most of the recommendations
- overall the Response strikes the right tone of integrating economic and environmental considerations in a way that belays the significant concerns raised in the business community (and their potential for negative impact on investment) that resulted from the tone, excesses and impractical recommendations that were part of the Parliamentary Committee Report
- the role of voluntary initiatives and economic instruments as complements to good regulations in achieving environmental protection is clearly recognized and supported
- the Response specifically recognizes the contribution ARET has made to environmental improvement and should set the stage for the government to start using ARET as a cornerstone for the government's environmental agenda
- the role of science and economics in decision making in CEPA is reinforced
- the Toxics Substances Management Policy and the approach to risk assessment as currently reflected in Section 11 of CEPA are recognized as the foundation for the government's approach to toxic chemicals
- the precautionary principle as defined in Principle 15 of the Rio Declaration is incorporated as a part of the risk based approach the Government Response adopts
- the need for continuous environmental performance improvement is stressed in the context of moving forward, recognizing that we have already made significant headway
- the increasing globalization of many environmental issues is recognized
- the role of MIACC in the development and implementation of emergency response and preparedness measures is appropriately recognized and supported
- the provisions in the Response generally set a tone of partnership in terms of working with the provinces to rationalize and harmonize the federal and provincial environmental management framework

With respect to this last point about **federal and provincial cooperation**, we would also like to emphasize the **linkages between the CEPA Review and the CCME Environmental Management Framework Agreement** initiative which needs to be finalized and implemented as a basis for sorting out federal and provincial roles and responsibilities. This is an essential prerequisite and complement for the CEPA Review if it is to provide for the predictability and certainty that investors require.

AREAS REQUIRING IMPROVEMENT

While the Response generally provides a sound basis for amending CEPA, particularly as noted above, a number of **improvements** need to be made to many of the recommendations such as in the key areas identified below. These issues are grouped under "**Recommendations Raising Serious Concerns**" where, as we outlined below, we recommend that the government reconsider its basic approach to the issue, and under "**Recommendations Requiring Constructive Enhancement**".

For this latter category, CCPA supports the government's intentions and objectives, as we understand them, but we recommend improvements and modifications in how the objectives are accomplished.

RECOMMENDATIONS RAISING SERIOUS CONCERNS

- constraints are required for the cost recovery proposals such as recognizing international competitiveness implications; also CEPA should adopt cost recovery principles which have been recommended by industry
- the proposed "right to sue" provisions are unnecessary and contrary to the principle that elected representatives, and not the courts, should be responsible for making decisions about protection of the environment and balancing social, economic and environmental interests
- it needs to be clarified that information to substantiate confidentiality claims needs to be provided when claims are challenged, and not up front automatically
- CCPA can accept the federal definition of pollution prevention, but an interpretation of that definition that includes reuse and recycling needs to be incorporated into CEPA
- CCPA objects to current National Energy Board provisions controlling fuel exports being extended to additives
- recommendations to incorporate administrative monitoring penalties and negotiated settlements as independent enforcement provisions need to be reconsidered
- CCPA objects to the overly interventionist and duplicative role proposed for the federal government in the hazardous and non-hazardous waste areas and to the concept of Canadian self-sufficiency in waste management

RECOMMENDATIONS REQUIRING CONSTRUCTIVE ENHANCEMENT

- it is appropriate to promote bio-diversity in the Preamble of the Act, but premature to incorporate a definition into the legislation
- it is premature to consider incorporating a "user/producer responsibility" principle into the Act until this is better understood and accepted internationally
- the requirements for a periodic review of CEPA should be optional (not mandatory), considered at 10 (not 7) year intervals and generally provide for an incremental or focused review and not a major rewrite
- more protection and safeguards are required re proposed information gathering provisions
- the proposed model pollution prevention plans are overly prescriptive and should be more clearly seen as guidelines and not as a requirements
- there is a need to more clearly determine the government's objectives in tracking progress on pollution prevention and consider alternatives to using NPRI for meeting those objectives
- cost recovery and "significant new use" provisions for new substances should not be considered for incorporation into CEPA until after the 1997 New Substance Notification Provisions review
- CCPA supports proposals for adding authority to require additional testing to conduct PSL assessments, but with certain conditions as we recommend

Our response is set out in more detail in the next section where we comment on the specific chapters in the Government Response.

PART II: CCPA Response in Detail

Chapter 1 - Guiding Principles

CCPA generally supports the recommendations in Chapter 1 with respect to sustainable, development, pollution prevention, ecosystem approach, biological diversity, intergovernmental cooperation, science and the precautionary principle and economic responsibility.

RECOMMENDATIONS THAT WE SUPPORT

- 1.1 CCPA strongly supports Recommendation 1.3 with respect to incorporating an **ecosystem approach** into CEPA, and Recommendations 1.6 and 1.7 with respect to recognizing the **strong role that science must play in CEPA** and the use of the UNCED definition of the **precautionary principle** which the Response proposes for CEPA. We also strongly support Recommendation 1.8 with respect to **economic responsibility** and the proposals that the Act reinforce the role of economics as a basis for decision making under CEPA. In this context the Act should be aligned with Treasury Board guidelines as set out in the "Benefit - Cost Analysis Guide for Regulatory Programs", prepared August 1995.

RECOMMENDATIONS REQUIRING CONSTRUCTIVE ENHANCEMENT

- 1.2 In terms of **sustainable development** and Recommendation 1.1, **CCPA recommends** that the concept of interdependence of social, economic and environmental systems should be specifically recognized in the definition. Sustainable development would then be defined to mean "development that meets the needs of the present without compromising the ability of future generations to meet their own needs and that recognizes the interdependence of social, economic and environmental systems". (Underlined words have been added.)
- 1.3 In terms of **pollution prevention** and Recommendation 1.2, CCPA can accept the proposed definition but **CCPA recommends** that it should be clarified that this definition can (and should) include reuse and recycling. This is a very significant interpretation issue and will be addressed further below in our comments on the pollution prevention chapter (Chapter 6).
- 1.4 In terms of **biological diversity** and Recommendation 1.4, we agree that this concept should be promoted in the Preamble, but **CCPA recommends** that it would be premature to include a definition of bio-diversity in the Act at this time. More experience should be gained with respect to the convention on biological diversity and its implications before the definition that it uses, or an alternative, is considered for adoption in CEPA. Defining bio-diversity in the Act should be considered when CEPA is next reviewed in the periodic review proposed in Recommendation 2.16.

- 1.5 We support Recommendation 1.5 with respect to **intergovernmental cooperation** but **CCPA recommends** that this should be extended beyond the Canadian domestic context to also acknowledge the increasing globalization of many environmental issues and the need for continued and increased global cooperation. Also it is important that the principle of intergovernmental cooperation result in action. In this context it is necessary that there be strong political will and leadership to move the CCME Environmental Framework Management Agreement forward to have it finalized and implemented. Agreeing on this basis for sorting out federal and provincial roles and responsibilities is an essential prerequisite and complement for the CEPA Review process if it is to provide for the predictability and certainty that investors require.
- 1.6 Recommendation 1.9 concerning **user/producer responsibility** raises a concept that is premature to specifically incorporate into CEPA as a guiding principle. Some of the provisions that are currently contained in CEPA (e.g. New Substance Notification Provisions) and that are recommended for inclusion in CEPA (e.g. additional powers for gathering information and requiring testing) can, in part, be justified based on this concept. If user/producer responsibility is seen as a policy to justify incorporating provisions such as these into CEPA, we agree with this. However, the concept is too undefined and too novel to be specifically promoted as a principle in the Act.

In quoting Harvard Professor Michael Porter, the Response (page 5) discusses developing policies "slightly ahead" of other countries. Without agreeing or commenting on the merits of this approach (and its application in Canada vs the larger U.S. market), it is worth noting that it is quite another thing to adopt in the Act policies that have not even been seriously considered for incorporation into law in other countries. **CCPA recommends** that the question as to whether user/producer responsibility should be specifically incorporated as a principle into the Act should be left to the next CEPA Review. As developers of Responsible Care®, CCPA is very willing to work with government officials to further explore the concept. It should be considered at the next CEPA Review if further work both domestically and internationally has led to a clearer understanding of what the concept would mean and what its implications would be.

ADDITIONAL RECOMMENDATIONS

CCPA recommends that the following two additional guiding principles should be incorporated into the renewed CEPA:

- 1.7 **Risk based decision making** is referred to as an operational principle for toxic substances management and environmental protection in the Government Response. **CCPA recommends** that this concept should specifically be included in the Preamble of the Act. Risk based decision making is necessary to properly prioritize health and environmental concerns and thereby

maximize public and environmental protection for the resources applied. The International Council of Chemical Associations has developed a guidance document on principles for risk based decision making and this is provided as a reference document as **Attachment 2**.

- 1.8 **Priority setting** is clearly necessary in dealing with environmental issues and **CCPA recommends** that this be explicitly recognized as a principle in the Act. Cost constraints on industry, government and society means there are limited resources and cost benefit analysis should specifically be required in the Act to set priorities in order to maximize public and environmental protection for the limited resources available.

Chapter 2 - Administration

CCPA's comments on the recommendations in this chapter are limited to the following:

RECOMMENDATIONS REQUIRING CONSTRUCTIVE ENHANCEMENT

- 2.1 With respect to **economic instruments**, CCPA supports Recommendation 2.13 and agrees that proposals for the use of measures such as environmental taxes and charges or financial incentives in the form of tax measures should remain the responsibility of the Minister of Finance. We would also **recommend** that a cautious approach be taken in developing and implementing economic instruments. These should be used only when they are the most effective solution to a recognized environmental challenge. The precise economic and environmental impact of economic instruments has not yet been adequately studied. Too often such policy tools may negatively impact economic growth and impede trade to the detriment of environmental performance, becoming tools of protectionism. Before endorsing particular economic instruments, governments should perform thorough cost-benefit analyses on a case-by-case basis, and weigh their economic, social, trade and competitiveness ramifications against their intended environmental outcomes.
- 2.2 With respect to the discussion of **non-regulatory approaches** to environmental protection, **CCPA strongly supports the recognition of the role of voluntary approaches set out in Chapter 2, in the Foreword, and in other parts of the Response**. Recognition and support for the role of voluntary approaches is most clearly and best stated in the Foreword, which would seem to imply that CEPA will be modified to provide a framework for voluntary initiatives. This is also implied in the discussion about jobs and growth and "good" regulation in the Overview Section. Recommendation 2.14, however, provides more tentative support to the recognition of voluntary approaches and discusses addressing this through the Department of the Environment Act instead of CEPA. **CCPA recommends** that the consultations that take place concerning the use of voluntary approaches should be on the basis of how this will be done (as suggested by the wording in the Foreword Section and in the Overview Section) and not on whether this will be done (after all voluntary approaches are already an important part of the

government's environmental policy framework in terms of initiatives such as ARET, the Climate Change Voluntary Challenge and Registry, Agreements (MOUs) with sectors and other examples). Whether the Department of the Environment Act or the CEPA legislation is the vehicle that the government uses to address voluntary approaches is less material than the need for the issue to be dealt with in the same time frame that the amendments to CEPA will be developed.

- 2.3 As noted above, CCPA supports the guiding principle of intergovernmental cooperation as set out in the Government Response and we believe that the provisions in Chapter 2 for **equivalency and administrative agreements and general agreements for environmental management** will be beneficial in this respect. When bilateral agreements are used we question the provisions in Recommendations 2.9 and 2.12 for these agreements to have five year sunset clauses such that they would expire five years after coming into force. **CCPA recommends** that it would be more appropriate to provide that these agreements should be reviewed (not sunset) every five years. This would be more efficient and require less federal and provincial government resources. This approach would also be seen by industry as providing a more stable and predictable framework (which will be important for investment). However, CCPA doubts that these bilateral agreements will be the best way to achieve effective harmonization, regulatory effectiveness, efficiency and cost reduction. We would instead place priority on finalizing the CCME Environmental Management Framework Agreement to avoid unnecessary proliferation of bilateral agreements.
- 2.4 Recommendation 2.16 provides for a **review of CEPA every seven years**. CCPA supports the proposal for a periodic review in principle, but it is important that there not be a major rewrite of the Act every seven years. As the experience with the current CEPA Review clearly illustrates, dealing with proposals for a major rewrite is very resource intensive for both industry and government. Moreover stability and predictability are required for carrying on business and for investment, and this would be difficult to provide if fundamental changes were expected to CEPA every seven years. Also, to provide for consistency with the review period for the Bank Act, 10 years should be the reference time for a review. **CCPA recommends** that Recommendation 2.16 be modified to provide that:
- every ten years a review of CEPA should be considered based on an assessment of needs, environmental developments and overall priorities, but carrying out the review should be optional rather than mandatory
 - the review should take an incremental and focused approach (rather than lead to a major review and rewrite of the legislation) unless the government instructs the Parliamentary Committee, dealing with the review, that a more fundamental review is appropriate.

RECOMMENDATIONS RAISING SERIOUS CONCERNS

- 2.5 With respect to **cost recovery** as proposed in Recommendation 2.17 and elsewhere in the

Response, CCPA does not object to cost recovery in principle, however, **CCPA recommends** that any provisions for cost recovery should be based on the following to ensure that the cost recovery is appropriate:

- any competitiveness impacts should have to be addressed in considering specific cost recover measures
- the service that is being charged for should have to be truly of a beneficial nature to those being charged
- the general principles for cost recovery set out in **Attachment 3** are broadly supported by the business community and should be adhered to by the government in implementing cost recovery

Recommendation 2.17 proposes to amend CEPA to allow for cost recovery. It is our understanding that the Financial Administration Act already allows recovery for costs of services that are provided by the government. This being the case **CCPA recommends** that cost recovery, where it is appropriate as discussed above, should be provided through that existing Act and not by amending CEPA in this area. We also emphasize that taxation typically covers expenditures made on behalf of the common good and this should continue to be the case.

We also note that the government's response to industry, with respect to the broad cost recovery principles proposed in **Attachment 3**, seems to include a back up central agency oversight role for departments and their development and implementation of cost recovery measures. This would more readily be accommodated if general legislation outside of CEPA were used for cost recovery purposes for Environment Canada.

Chapter 3 - Public Participation

RECOMMENDATIONS REQUIRING CONSTRUCTIVE ENHANCEMENT

3.1 With respect to **access to information by the public** through an **electronic registry** and Recommendations 3.1 to 3.3, CCPA notes the following:

- The electronic public registry provisions essentially parallel what has recently been introduced in Ontario under the Ontario Environmental Bill of Rights. **CCPA recommends** that analysis should be provided for public discussion as to how the Ontario system has worked, its benefits and its costs before the federal government proceeds with a similar system. In this analysis, steps that the Ontario Government is taking to streamline its public registry system should also be considered.
- Recommendation 3.1 proposes three options for an electronic registry. **CCPA recommends** the third option of creating the registry through a policy decision without enshrining this in law would be the most appropriate option at this time until experience is

gained in terms of how an electronic registry would operate. Based on such experience, the question of enshrining the registry within CEPA should be considered in a subsequent CEPA review. Issues as to what should and what should not be included in the registry would also be better dealt with through policy decisions rather than by creating legal requirements at this time.

- There is no discussion in the Response about the electronic registry with respect to protecting confidential information. We presume that this would be covered by the general confidentiality provisions that are provided in the current Act and in the Access to Information Act and as discussed under the confidentiality provisions of Chapter 4 (where we have some concern as outlined below).

3.2 With respect to **citizens reporting violations** and Recommendation 3.7, we assume that this recommendation does not call for legislative change and that 3.7 (b) applies to those who are directly affected seeking an injunction as is currently provided for in Section 136(2) of CEPA.

RECOMMENDATIONS RAISING *SERIOUS CONCERNS*

3.3 With respect to the right to sue provisions, there is no demonstrable need for a new cause of action. Any person including the Crown that suffers loss or damage has a statutory right of action under CEPA in addition to common law remedies of negligence, nuisance, trespass, strict liability and others. Moreover, where there has been a conviction, CEPA provides the Court with a wide range of remedies including prohibition, remediation, compensation, publication, community service, payment for research, and conditions requiring good conduct. Even if constitutional, the creating a new cause of action is an intrusion of the federal government into an area that has traditionally been a provincial matter and should be left to the provinces to determine. The government should not adopt from the United States a new cause of action that has found limited acceptance even in the litigious United States. There are in existence better ways for protecting the environment. The elected representatives should be responsible for the protection of the environment and should make the decisions balancing the social, economic, and environmental interests rather than the courts at the instigation of special interest groups.

CCPA recommends that an analysis should be provided by the government as to why this provision is not redundant given the forgoing and given that the government has already provided for an Environmental Auditor as an alternative (and likely more effective) way to deal with the Red Book commitments to provide citizens a recourse if the government persistently fails to enforce an environmental law. This analysis should be provided to the public as part of the consultation process for the CEPA Review.

If the government decides to proceed with incorporating a right to sue within CEPA, **CCPA recommends** that this cause should be modelled on the Ontario Environmental Bill of Rights as the Response proposes (more clearly in the Executive Summary than in Chapter 3). The new

cause of action should be limited to CEPA and the protection of public resources, prospective, and contain all the safeguards that are set out in the current Ontario EBR. The Ontario legislation was developed through extensive consultations involving all stakeholders and the balance of its provisions would be relevant to a new cause of action. It would be a waste of resources to repeat the detailed consultations that took place in Ontario and to adopt a different approach would ignore the Ontario consensus process and would be inconsistent with the government's stated objectives of intergovernmental cooperation and coordination of environmental measures.

RECOMMENDATIONS THAT WE SUPPORT

- 3.4 With respect to a **civil remedy for environmental risk**, CCPA strongly supports the government conclusions at page 27 of the Response that this recommendation contained in the Committee Report deviates from Canada's common law convention of civil liability and should not be incorporated into CEPA.
- 3.5 CCPA also supports the conclusion in the Government Response as set out in Recommendation 3.10 that incorporating a **rights to prosecute** in CEPA as proposed in the Standing Committee Report should be rejected.

Chapter 4 - Ecosystems, Science and National Norms

CCPA generally **supports** the discussion about an ecosystem approach contained in this chapter and the emphasis on the importance of science to sound decision making. We also support the emphasis that is given in this chapter to the State of the Environment (SOE) Report for Canada. We see the SOE Report as an important tool to show where we are making progress and where priorities should be set for making additional progress. We have comments on several of the specific recommendations in this chapter as follows:

RECOMMENDATIONS THAT WE SUPPORT

- 4.1 With respect to Recommendation 4.3 and the **NPRI**, CCPA supports this recommendation and the commitment that the government will use a multistakeholder consultative processes for any changes to the NPRI.

CCPA sees the NPRI as a critically and increasingly important policy tool. From our perspective, there seems to be an increasing number of requests from federal and provincial governments for information on current emissions and projections for future reductions. We had expected that the purpose of the NPRI would be to provide "one stop shopping" for such initiatives, but there seems to be insufficient national coordination and leadership of the NPRI program for this result to be accomplished. One example of the government's needs for emissions information not being able to be met by NPRI is the Canada/Ontario Agreement.

What is required is a streamlined approach to emissions inventory requirements that can fulfill federal and provincial needs while minimizing the reporting burden on industry. In this context it is not only important that there be harmonized reporting requirements, there is also a need for the development of a single national data base for this information.

RECOMMENDATIONS REQUIRING CONSTRUCTIVE ENHANCEMENT

4.2 With respect to Recommendation 4.2, the proposed **information gathering powers** are extensive and very comprehensive. We support the safeguards that are described and **CCPA recommends** that:

- the amended Act specifically provide that for Recommendation 4.2 (a) information, this would only be used for statistical purposes and Environment Canada would have to consult with Statistics Canada with respect to its collection and publication
- the proposed restrictions on using the information listed in Recommendation 4.2 (b) to (i) only in State of Environment reports and in the development of ecosystem objectives, guidelines, codes of practice and inventories should be specifically provided for in the Act
- the proposed requirements to use information gathering powers only when necessary and in a cost efficient manner should also be included in the Act

The information gathering provisions set out in Recommendation 4.2 should be seen as a complete list of what the Minister can ask for. **CCPA recommends** that this list should be described in terms of "data in one's possession and control" and not in terms of "whatever data is in one's possession or control such as" (i.e. the "such as" makes the list too open ended).

With respect to the specific areas identified in the Recommendation 4.2 list where the government would be authorized to obtain information, we have concerns about the implications of provision (j) information pertaining to pollution prevention. This will be discussed in the comments on Chapter 6 (Pollution Prevention).

RECOMMENDATIONS RAISING SERIOUS CONCERNS

4.3 With respect to **requests for confidentiality** and Recommendations 4.4 to 4.6, **CCPA recommends** that it is critical to **clarify that the intent is to require information to substantiate confidentiality claims when such claims are challenged, and not to require substantiation up front automatically when a claim is made.** The former is the approach taken in the Access to Information Act which Recommendation 4.5 seems to indicate will be the basis for the type of regulatory powers that are envisioned for CEPA. Under the Access to Information Act and under current Environment Canada policy, information substantiating a confidentiality claim has to be provided only in the relatively few cases where a claim is actually challenged and not up front as a matter of course for all confidentiality claims. We believe that experience has shown that this approach (substantiation when challenged) is the most effective

in terms of limiting the industry resources that are required to generate such information and government resources required to review it to situations when an actual concern about the confidentiality claim has been raised.

The following considerations are also relevant:

- Our concerns about this issue are heightened by experience with the Hazardous Materials Information Review Commission (HMIRC) which requires up front substantiation and has caused significant problems and costs for the government and industry.
- A debate recently took place on this issue within the Environmental Protection Agency in the U.S. and they concluded that they should not adopt a general policy of up front substantiation.
- CCPA discussed this specific issue with the Toxic Chemicals Branch of Environment Canada several years ago and they concluded that they should not adopt a policy of up front substantiation. See **Attachment 4** the November 30, 1993 letter "CBI Claims & Resource Constraints: The Case Against 'Up Front' Substantiations.

It is our understanding that this issue of up front substantiation seems to be driven by a desire to discourage confidentiality claims for NPRI emissions data. Rather than considering general provisions with respect to requiring up front substantiation, this public policy objective (of full NPRI emissions data disclosure) could be accomplished more efficiently and effectively by the NPRI adopting the approach that CCPA has taken with respect to NERM of companies not claiming emissions data as confidential. Alternatively, as a matter of policy and normal operating procedures, Environment Canada officials could continue to challenge (as we understand they now do), any claims for confidentiality for NPRI emissions data and companies making such claims would then have to provide substantiating information.

If the government does not agree with the above position and the need for the confidentiality provisions to be based on the Access to Information Act approach of requiring substantiating information to be provided only when there is a challenge, we believe that this will become a very significant issue from a broad industry perspective in the further discussions that will take place on the CEPA Review. There is no need to depart from the current government policy as embodied in the Access to Information Act and current Environment Canada policy. Those CCPA members who have had experience with HMIRC (and its requirements for up front substantiation and how it deals with trade secret claims) believe that it represents one of the worst problems that Canada faces in terms of unnecessary and costly government intrusion and noncompetitive regulatory requirements.

- 4.6 With respect to Recommendation 4.7, this will be discussed under our comments on Chapter 6 concerning pollution prevention.

Chapter 5 - Enforcement

CCPA recognizes that enforcement activities are an essential component in securing compliance with CEPA and encourages the government to consider alternative enforcement mechanisms which are fair, effective and efficient. CCPA, however, has specific concerns and recommends certain alternatives to some of the enforcement proposals contained in Chapter 5.

RECOMMENDATIONS RAISING SERIOUS CONCERNS

- 5.1 **CCPA does not support the inclusion of Administrative Monetary Penalties (AMPs) and negotiated settlements in CEPA** and believes that the existing penal framework under CEPA is adequate. Ticketing for minor infractions, which CCPA supports, provides a satisfactory avenue for summarily dealing with minor infractions. Non-ticketable infractions are prosecuted under the existing criminal process and upon conviction subject to a wide range of penalties and orders.

AMPs whether categorized as administrative, civil or quasi-criminal, are penal, not remedial, in nature and will be treated as such by the parties involved, the media and the public. Penal sanctions ought not be imposed on a party except following proceedings which employ sufficient evidentiary safeguards, including the criminal standard of proof and the due diligence defence. It would be unfair and contrary the reasoning of the Supreme Court of Canada in R.v. Sault Ste. Marie to subject parties to penalty under circumstances where all reasonable care had been taken by them to avoid the harm. The arguments by the Supreme Court against absolute liability are equally applicable to AMPs - absolute liability violates fundamental principles of penal liability and is based on the assumption that a higher standard of care results from absolute liability. A person taking every reasonable precautionary measure is not likely to take additional measures, knowing that however much care he or she takes will not serve as a defence in the event of a breach. If a party has exercised care and skill, a conviction will not have a deterrent effect upon him or others. **Canada should be cautious about following the U.S. lead by adopting a civil penalty type provision which serves to increase legal entanglement and costs at the expense of more effective compliance and remedial programs.**

- 5.2 While CCPA supports government initiatives to encourage compliance and the timely correction of environmental damage, **CCPA does not recommend that the government adopt the form of negotiated settlements proposed in the Government Response.** As a mechanism to facilitate the development and implementation of enforceable plans of action to remediate an existing violation and ensure that future violations do not occur, **CCPA recommends** that the government consider adopting the Ontario program approval approach. Upon discovery of an actual or potential environmental risk or violation, a party may enter into a program approval with the regulator to address the source of the problem over a specified period of time. By not requiring that a party admit to a violation as a term of the approval and by providing the party

with immunity from prosecution if the party fully complies with the approval, program approvals hold considerable promise as a compliance tool which encourages parties to step forward not only with actual but with potential violations.

CCPA recommends that, given the nature of the power, **authority to issue “cease-and-desist” or “stop” orders be limited** to designated senior officials and exercisable only under circumstances where the violation has caused or may cause significant danger to human health or the environment.

RECOMMENDATIONS REQUIRING CONSTRUCTIVE ENHANCEMENT

- 5.3 With respect to Recommendation 5.14 and the concept of an **environmental fund**, CCPA agrees with the analysis in the Government Response that it would be inappropriate to provide for funding government environmental programs through a fund that would be derived from fines imposed by the courts. Given this analysis, we do not believe that it is appropriate for Recommendation 5.14 to specifically mention the Minister of Environment as being a possible designate to act as a trustee that the courts could appoint with respect to administration of awards imposed by the courts for CEPA violations. Therefore, in amending CEPA to broaden the discretion of the courts to direct how awards are imposed in this area, **CCPA recommends** that it be left to the discretion of the courts as to who to designate as trustee and in particular, there be no specific mention of the Minister of Environment as a possible designate.

Chapter 6 - Pollution Prevention

RECOMMENDATIONS RAISING SERIOUS CONCERNS

General Discussion of Reuse and Recycling as Part of Pollution Prevention

- 6.1 CCPA accepts the **definition of pollution prevention** that is referred to in the Response and is set out in the document Pollution Prevention - A Federal Strategy for Action. However we **strongly disagree with the interpretation of this definition that excludes off site reuse and recycling**. We recommend that the government's pollution prevention definition can and should be interpreted to include reuse and recycling. They are both, certainly, a part of shifting the focus from cleaning up pollution to preventing it in the first place, which is the government's stated objective. As is explained in the Government Response, the goal of pollution prevention is “to turn thinking away from pollution control and waste treatment as preferred mechanisms for protecting the environment”. In pursuing this objective it is impractical, as well as wrong for the environment and wrong for the economy, to exclude off site reuse and recycling. (In this context reuse should be seen as including energy recovery.)

Product substitution and producing products more efficiently (so that less material is used and/or

less byproduct waste is created) are certainly major components of preventing pollution, but so is reuse and recycling of materials that otherwise would be waste and/or would require treatment. Many manufacturing residues from one operation are often the raw materials for another type of operation, both within a single plant or between different plants in the same or different industrial sectors. Also, more and more, off site reuse and recycling are an important part of product stewardship as companies assume responsibilities for the environmental consequences of a product throughout its life cycle. Any concerns that reuse and recycling are less environmentally and economically efficient than steps to produce products more efficiently or product substitution are addressed by the federal government's definition of pollution prevention requiring that it "reduce overall risk to human health or the environment". As Professor William Leiss of Queens University noted in a recent paper "Governance and the Environment" the relevant questions in the context of pollution prevention are:

Has a risk been shifted unacceptably, is there a demonstrable risk reduction and are the new risks acceptable according to prevailing community standards? If the first answer is 'no' and the second answer is 'yes', there is no reason not to proceed.

The federal government's current definition of pollution prevention provides for this risk based approach, **but the interpretation that has been adopted should be changed to allow for reuse and recycling as part of pollution prevention and this should be stated clearly.**

It is also noteworthy that the ISO Environmental Management Systems (EMS) initiative has included reuse and recycling in its interpretation of pollution prevention. For the Canadian Government to apply a different approach may impede ISO EMS implementation (by influencing companies to keep dual records) which would be contrary to the government's objectives.

To ensure that this issue of including reuse and recycling is clearly addressed in any legislated definition of pollution prevention, **CCPA recommends** that the definition currently adopted by the federal government either be explicitly reinterpreted or (and preferably) the definition should be modified (underlined words added) to be:

Pollution Prevention means use of processes, practices, materials, products or energy that avoid or minimize the creation of pollutants and waste in ways that reduce overall risk to human health or the environment in the most economically and environmentally efficient manner and which may include recycling, reuse, energy recover, process changes, in plant control mechanisms, efficient use of resources and material substitution.

For interpretation purposes this definition, or an official interpretation of it, should also specify that "pollution" is created only when a substance is released into the environment and a substance becomes a "waste" only when it is destined for final disposal. We believe that these clarifications

are consistent with the government's "Pollution Prevention Strategy for Action". Moreover, as Professor William Leiss of Queens University puts it in a the paper "Governance and the Environment" in discussing pollution prevention, "What should we care if some new hazardous substance is created as long as it is not released (e.g. there is no exposure to it)."

- 6.2 If this approach we recommend, of including reuse and recycling within pollution prevention, is adopted, Recommendation 4.7 would need to be revised to describe pollution prevention as including reuse and recycling.

RECOMMENDATIONS REQUIRING CONSTRUCTIVE ENHANCEMENT

With respect to the specific recommendations in Chapter 6, CCPA has the following comments:

- 6.3 Recommendation 6.1 (which we support) enables the Minister to **require the preparation and implementation of pollution prevention plans** for toxic substances based on predetermined criteria which the Response proposes. This approach appropriately recognizes that government intervention into what companies are doing to promote pollution prevention should be limited to areas where the government would have significant concerns (e.g. toxic substances) and, as proposed, decisions to intervene should be based on preset criteria determining when such intervention is necessary and warranted. This fits well with the statement that "pollution prevention planning should become a self-sustaining business practice rather than a regulatory burden on industry or an enforcement burden on governments", which is the stated position of both the Standing Committee and the government and which CCPA strongly supports.
- 6.4 In this context of limiting government intervention to where it is necessary, CCPA believes that Recommendation 6.3, which permits requiring **pollution prevention plans for infractions of CEPA**, should be modified. Instead of the Minister being able to require preparation and implementation of pollution prevention plans where there is an infraction of a CEPA regulation or where there is a finding of liability under the proposed Administrative Monitoring Penalty System, there should have to be a higher hurdle before government intervention could be triggered. We suggest that the type of hurdle discussed in Recommendation 5.13 would be appropriate. Specifically **CCPA recommends** that Recommendation 6.3 should be amended to restrict the ability of the Minister to intervene to situations where there has been a conviction of an offense under CEPA through the courts.
- 6.5 The elements of **pollution prevention plan guidelines** set out in Recommendation 6.4 should be more clearly seen as guidelines for industry to consider and not as requirements for industry to include in their plans. Given the reference in Recommendation 6.5 to it being an offense under CEPA if a plan is not submitted in accordance with the guidelines, the provisions in Recommendation 6.4, in effect, have the force of a regulation. Specifically **CCPA**

recommends:

- Recommendation 6.4 should discuss the model pollution prevention plan guidelines in terms of companies considering the elements of the pollution prevention plan that are proposed and adopting them as appropriate to their circumstances.
- Recommendation 6.5 should not refer to pollution prevention plans having to be "prepared in accordance with the guideline" (as stated above, terminology such as "considering the guideline" would be more appropriate) and this should not be a matter of committing an offense.

An additional important reason why the guidelines for model pollution prevention plans need to be flexible and not prescriptive is that provincial governments are also involved in working with industry in this area. **We do not want a situation where different levels of government require different pollution prevention plans from industry.** The government's "Pollution Prevention Strategy for Action" paper also stresses this need for a harmonized and cooperative approach among jurisdictions. **This can only be accomplished if pollution prevention is approached in a flexible, non-prescriptive way.**

- 6.6 With respect to Recommendation 6.7 and **tracking progress on pollution prevention**, CCPA agrees that progress on pollution prevention in Canada should be able to be tracked in some general way, but we are very concerned that this not lead to red tape requirements and reporting requirements that would impose a regulatory burden on industry or an enforcement burden on governments. In this context we are also concerned about the proposals to use the NPRI to provide a means for industry to report on pollution prevention activities. This should only be considered in the context of a purely voluntary request for very simple information that would be included in the NPRI survey for convenience. Moreover, **CCPA recommends** that agreement on any such provision should only be developed through consultation with industry and other stakeholders to determine what information really is needed and why, and how to obtain that information in a way that supports the government's (and industry's) objective of pollution prevention not becoming a "regulatory burden on industry or an enforcement burden on governments".
- 6.7 In the context of ensuring that the government's collection of pollution prevention information does not become a regulatory burden, further consideration also needs to be given to **Recommendations 6.9 & 6.10 and their interrelationship with Recommendation 4.2 (j).** Overall we believe that the intent of Recommendations 6.9 & 6.10 should be to obtain information on pollution prevention from industry through voluntary approaches and it would seem that this is what is provided for in these two recommendations, although this should be clearer. Recommendation 6.9 talks about empowering the Minister to collect environmental data, not about empowering the Minister to require its provision. Recommendation 6.10 seems to talk about disseminating information that the government has collected and not about

empowering the government to require information to be provided. Thus we conclude that the information to be provided will be provided on a voluntary basis. This is appropriate and fits government's and industry's objective of pollution prevention becoming a way of business and not imposing a "regulatory burden on industry or an enforcement burden on governments". Recommendation 4.2 (j) would seem to be inconsistent with this approach and **CCPA recommends** that it should be deleted. The question of how the government would collect information on pollution prevention should be sorted out solely in the context of how Recommendation 6.7 is implemented through voluntary measures as described above.

RECOMMENDATIONS THAT WE SUPPORT

- 6.8 With respect to the discussion about **environmental aspects of emergencies** and the Response recommendations in this area, CCPA generally supports the government proposals and is particularly encouraged by the recognition of the role of MIACC. An improvement that **CCPA recommends** in this section is to ensure that the municipal role is appropriately recognized, particularly in Recommendations 6.16 and 6.17.

Chapter 7 - Biotechnology

CCPA members who are involved in the production of biotechnology products will be commenting on this chapter through various associations that they belong to that deal with biotechnology issues.

RECOMMENDATIONS REQUIRING CONSTRUCTIVE ENHANCEMENT

- 7.1 The one concern that CCPA would raise with this chapter is with respect to Recommendation 7.5. Current provisions within CEPA relative to the importation, manufacture and use of substances are not set out in terms of the government issuing permits. Instead they are described in terms of notification requirements. We believe that it is important that there be consistency in the Act in this respect and **CCPA recommends** that if authority is provided in the Act for dealing with biotechnology activities regulated under CEPA, this should not be in terms of issuing permits but should only be in terms of providing for notification requirements as is currently the case in Part II.

Chapter 8 - Controlling Pollution and Wastes

International Air Pollution

RECOMMENDATIONS REQUIRING CONSTRUCTIVE ENHANCEMENT

- 8.1 CCPA interprets the provisions in Recommendation 8.1 as generally maintaining the type of arrangements that have recently been developed with the provinces to involve them in joint

management, with the federal government, of international air pollution issues recognizing that international negotiation is a federal responsibility but that the provinces need to be involved as, among other reasons, implementation of what is negotiated is generally a provincial issue. In this context we would also point out and support continued use of mechanisms that have recently evolved to involve stakeholders in these discussions (e.g. NAICC with respect to climate change issues and hazardous air pollutant issues).

In this general context of joint management, Recommendation 8.1 also provides for international air pollution authority for **unilateral federal government action in emergency situations**. If such a provision is to be provided for in a renewed CEPA, CCPA recommends that "emergency situations" be clearly defined.

Fuels

RECOMMENDATIONS RAISING SERIOUS CONCERNS

8.2 In general, CCPA is not commenting on the recommendations in the Fuels section as these do not apply to our members as chemical producers. The exception is Recommendation 8.6 which, as we interpret it, would seem to propose amendments to the National Energy Board Act to enable the **regulation and prohibition of the export of fuel additives**. CCPA does not support such a change to the National Energy Board Act. Its current provisions concerning the control of the export of hydrocarbon fuels were implemented for energy self-sufficiency purposes, as we understand it, and we do not see any justification for the use of the Act to prohibit the export of fuel additives.

Reduction of Hazardous Waste and Non-Hazardous Waste

8.3 CCPA finds this to be the **most problematic section of the Government Response**. While most of the Government Response seems to recognize the need for cooperation with the provinces and moving away from overlap and duplication and the need for a generally less interventionist approach to environmental management, many of the recommendations with respect to hazardous and non-hazardous wastes seem to go in the opposite direction. Moreover the concept of promoting internal Canadian self-sufficiency for hazardous waste disposal rather than making use of regional solutions with the U.S. is a significant cause for concern. On the other hand there are some aspects of these recommendations which CCPA supports, particularly the objective of distinguishing between wastes for final disposal and recyclable materials and treating these differently. Specifically our concerns are as set out below:

RECOMMENDATIONS THAT WE SUPPORT

8.4 With respect to Recommendation 8.12, CCPA **supports** the Canadian government's current efforts with respect to establishing a **waste definition** to distinguish among waste for final

disposal, recyclable materials and products, and urges that this approach be taken when developing a definition of waste in a renewed CEPA.

RECOMMENDATIONS RAISING SERIOUS CONCERNS

8.5 With respect to Recommendation 8.13 and **responsibilities of users and producers**, CCPA is uncertain as to what this means. We agree that producers and users of toxic substances should be responsible for their own waste. The concept of product stewardship, which is part of Responsible Care® and which we support, extends this responsibility throughout the life cycle of the product so that the producer maintains a residual responsibility even after the product is sold. This is something that should continue to be promoted by encouraging companies to adopt programs such as Responsible Care® and other product stewardship initiatives. It is, however, **inappropriate to legislate product stewardship requirements into CEPA** as a general obligation as this would lead to an unwarranted level of government intervention in the complex workings of the marketplace. Moreover, to our knowledge, no other OECD country has adopted such an approach. This issue should be dealt with on the same basis as the government has put forward for pollution prevention planning, namely that it should become a "self-sustaining business practice rather than a regulatory burden on industry and an enforcement burden on governments". **CCPA recommends** that encouraging voluntary approaches, not regulation, is what should be considered and if there is a need to review this issue in the future; the next CEPA Review would be appropriate.

8.6 With respect to Recommendation 8.15, **CCPA recommends** that this recommendation be deleted. We believe that the general guiding **principle of Canadian self-sufficiency in waste disposal is misguided** and does not make environmental or economic sense. Also, contrary to what is implied in the Government Response, there are no international obligations that would require Canada to adopt such self-sufficiency. The real issue here is regional disposal between Canada and the U.S. This is currently provided for under Canada/U.S. agreements and is also supported under general international principles such as, for example, Agenda 21. Indeed one of the Canadian objectives at UNCED in Chapter 20 (Environmentally Sound Management of Hazardous Wastes) of Agenda 21 was to obtain international support for the principle of sharing environmentally sound facilities on a regional basis. This objective was successfully achieved as Chapter 20 provides for transboundary hazardous waste movement to take place on environmental and economic grounds and based on agreements between the states concerned. That is the case with respect to Canada and the U.S. and current practices should be supported by government policy.

In short, we find this recommendation unacceptable for three reasons. The policy is bad for the environment as it does not support using the best facilities and instead promotes using only Canadian facilities. It is bad on economic grounds as it is a protectionist trade policy which

would limit competition and increase costs. It calls for greater government intervention at a time when the issue is less government and the need to prioritize resources to support essential services and policies.

- 8.7 With respect to Recommendation 8.18, CCPA fails to see the justification for adding authority within CEPA for the government to **control export and import into Canada of non-hazardous solid waste**. If this power were to be restricted to circumstances that involved meeting Canada's obligations under international agreements, the provision would be appropriate. Otherwise there is no basis for a federal government role with respect to import and export of non-hazardous waste.
- 8.8 With respect to Recommendation 8.20 re **control of interprovincial shipments**, if the federal government is to have these proposed powers, **CCPA recommends** the legislation should provide that they should only be able to be exercised at the request of an affected province. It is not necessary for Environment Canada to take over the manifest system from TDGA for this purpose. If this recommendation were to be implemented to the limited extent that we would support as described above (e.g. federal action only on the specific request of an affected province), this should only be done if an analysis is provided to show that provincial governments have actually requested the federal government to perform such a task and that the costs of doing so would be warranted. One of the objectives put forward to promote Recommendation 8.20 in the Government Response is the desirability of harmonization. This has been a long term objective with respect to waste manifest systems. Substantive progress has been made and currently there is nearly a uniform approach in Canada. We agree that further improvement is possible and desirable. However, we believe that this can be done on the basis of national cooperation between the governments without a need for the federal government to adopt additional federal powers in this area. There is no reason to believe such additional power will actually promote harmonization.
- 8.9 With respect to Recommendations 8.21 and 8.22, **CCPA recommends** that **cost recovery** provisions should not apply in this area. As pointed out above, we do not believe that the federal government should become involved in regulating the movement of waste within Canada or in controlling the export and import of non-hazardous solid waste. This is not a beneficial service, but rather the creation of unnecessary, additional bureaucracy that would not likely be justified in the type of budget allocation and prioritization process that normally take place in determining what government activities are worth funding from general revenues. This is a clear indication of the type of problems that we see can arise with implementation of cost recovery as it may allow departments to carry out activities that they can fund by taxing those that are supposedly receiving a beneficial service **where indeed no benefit exists** and the activity would not receive funding or approval if normal constraints involved in the government budgeting process were imposed.

CEPA and Canada's Oceans

RECOMMENDATIONS RAISING SERIOUS CONCERNS

- 8.10 While CCPA members are not generally affected by these provisions and therefore we generally have no comments, we note that Recommendation 8.30, with respect to **ocean disposal fees**, would seem to be outside of the scope of the type of economic instruments that are discussed in Recommendation 2.13 that the Government of Canada proposes Environment Canada should use. The fees described in Recommendation 8.30 seem to be clearly the type of tax or charge that the discussion with respect to Recommendation 2.13 provides should be the purview of the Minister of Finance and not the Minister of the Environment. **CCPA recommends** that Recommendation 8.30 be deleted.

Chapter 9 - Controlling Toxic Substances

RECOMMENDATIONS THAT WE SUPPORT

- 9.1 **CCPA strongly supports the thrust of this chapter and the way it maintains the Toxic Substances Management Policy and principles of risk assessment as the appropriate basis for controlling toxic substances under CEPA.** We also strongly agree with the discussion and recommendations with respect to the precautionary principle and the use of an ecosystem approach. In terms of producer/importer responsibility, we generally support the specific proposals in Chapter 9 to implement this principle in terms of CEPA authorizing the Minister to require additional testing to conduct PSL assessments, but under certain conditions as will be discussed below.
- 9.2 Recommendation 9.5 is at the heart of maintaining the TSMP and risk assessment as the means to control toxic substances. We agree with the Government of Canada's conclusions as set out in Recommendation 9.5 and we **strongly support the position that there is no need to amend Section 11 to implement Recommendation 9.5.**

The predictability that the TSMP promised and needs to provide is one of the reasons CCPA supports it. In this context we agree with the approach proposed in Recommendations 9.1(i) and 9.6 that the criteria set out in the TSMP for persistence and bioaccumulation should be put into regulations.

RECOMMENDATIONS REQUIRING CONSTRUCTIVE ENHANCEMENT

While generally supporting the provisions in Chapter 9, we believe that two of the recommendations require improvement.

9.3 With respect to Recommendation 9.9 and the provisions to empower the Minister to require the carrying out of **additional testing where necessary to conduct PSL assessments**, CCPA agrees in principle with these proposals, but **CCPA recommends** that the following specific conditions should be incorporated into the legislation with respect to exercising this power:

- Full use should first have to be made of data available from other sources internationally. This is consistent with the Government Response with respect to drawing on the work of OECD members states and other international bodies in an effort to share responsibility for generating needed data where appropriate. Although this view is set out in Recommendation 9.1 (i), it is equally appropriate with respect to Recommendation 9.9.
- Cost and competitiveness implications should be required to be taken into account by the legislation in determining the testing and data collection that the Minister would require.
- The legislation should ensure that in exercising the powers to carry out additional testing where necessary to conduct PSL assessments, there would be a fair burden sharing among affected companies.
- The legislation should provide for the government to be able to first obtain exposure information when considering requesting additional testing to conduct PSL assessments, when such exposure information may reduce (or eliminate) the amount of toxicity data that would be required.

9.4 With respect to provisions related to **new substances** and Recommendation 9.11 to require significant new use reporting (SNUR) and the discussion at page 71 about implementing cost recovery, **CCPA recommends** that the approach that is taken with respect to Recommendation 9.12 also be adopted in these areas such that consideration of cost recovery and SNUR proposals is deferred to be part of the multistakeholder review of New Substance Notification regulations that the government will undertake in 1997. When the New Substance Notification provisions were implemented, CCPA had understood from the government that any significant changes affecting New Substances Notifications would be considered as part of this review process and not prior to it.

Chapter 10 - Government Operations

CCPA has no comments on this chapter except to say that we support government operations having to comply with the same requirements as industries.

PART III: Additional CCPA Recommendations Re Controlling Toxic Substances

When CCPA filed its submission in September 1994 with the Standing Committee on Environment and Sustainable Development on the review of the Canadian Environmental Protection Act, we made a number of recommendations with respect to toxic substances control that we would like to bring forward again for the government's consideration at this time. These have been extracted from our September 1994 brief and are set out below.

With respect to the first of these recommendations (being able to call for a Board of Review whether the Minister decide that a substance is toxic or whether the Minister decide that a substance is not toxic) we note that the type of "even handed" approach that we advocate has been adopted by the government elsewhere in the Response in Recommendation 8.35 with respect to members of the public as well as applicants and ocean disposal permit holders being able to file notices of objection in terms of ocean dumping permits being refused, varied, or revoked.

These specific recommendations that we are repeating from our September 1994 submission are as set out below:

1. **Board of Review:** Section 13(2) currently provides that when the ministers makes a toxicity assessment and decide not to recommend that the substance be added to the list of toxic substances, a request can then be made to establish a Board of Review. We believe that the provision to be able to call for a Board of Review should apply to decisions under Section 13(1) whether the ministers decides the substance is toxic or whether the ministers decides it is not toxic. Therefore **CCPA recommends** that Section 13(2) should be amended to read:

Section 13(2): Where the ministers makes an assessment referred to in subsection (1), any person may, within 60 days after publication of the decision in the Canada Gazette, file a notice of objection with the ministers requesting that a Board of Review be established under Section 89 and stating reasons for the objection.

2. **Solving Housekeeping Problems Now:** There are a number of important non-controversial housekeeping problems with the enabling legislation for the New Substance Notification Regulations that are significant irritants to industry (and probably to government), and which should be resolved by making amendments to CEPA as quickly as possible. Indeed **CCPA recommends** these amendments should be fast tracked through the CEPA Review process and the government's legislative agenda and become part of the Miscellaneous Statutes and Laws Amendment. These concerns and proposed amendments are as follows:

- 2.1 **Green Lighting:** As the Environment Canada "Overview Paper" points out, an issue that is important for both the government and industry is providing the government with the statutory authority to permit import and manufacture of new substances, after an assessment has been completed, if the substance has been found to be not toxic, without waiting for the prescribed period of assessment to expire. That prescribed period can be as much as three months, and we anticipate that some assessments that can be done much earlier will be affected by this restriction. For a Canadian subsidiary trying to win a mandate to develop and export a product from Canada, a three month unnecessary delay in being able to commercially manufacture the product may be enough to preclude the Canadian subsidiary from "beating out" competing sister companies from other countries for the job. **CCPA recommends** Section 26(1) should be amended to allow manufacture or importation of a substance at an earlier date than the expiration of "the period for assessing the information under Section 28" if the government has been able to assess the information earlier. Alternatively, or in addition, amending Section 28 may be required to address this problem. This is a very important issue and we urge the Parliamentary Committee and the government to accept our recommendation that a solution be implemented as soon as possible.
- 2.2 **Notifying the Exceedance of the Trigger Quantity for Qualification for the DSL:** We believe that Section 26(7) provides an unreasonably short period (30 days) for notifying the exceedance of the trigger quantity for qualification for the DSL. Company accounting systems are not that responsive. As a result, a company may notify too early rather than risk non-compliance; then a correction may be necessary when accounting records have been verified. This approach will lead to unnecessary additional resource demands on both the company and the government in administering the legislation. **CCPA recommends** that the time requirement in Section 26(7) should be modified to stipulate a 60 day notification period. Again, this is a straight forward amendment that would improve the implementation of the new substance provisions of CEPA for both the government and industry and we would urge that this be dealt with so a change could be in place as soon as possible.
- 2.3 **Rapid Amendments to DSL and NDSL:** As the DSL and NDSL are critical in determining the amount of testing that needs to be done before introducing a substance to Canada, it is important that the government correct errors on the DSL or NDSL or deal with additions to the DSL or NDSL forthwith in the process of updating these lists through the Canada Gazette. **CCPA recommends** that authority under CEPA should be able to be delegated to the Director, Commercial Chemicals Branch to make changes in these lists and the Gazetted updates. If this can be done, the Gazetted list should be only one week out of date at the time of issue and three

weeks out of date prior to issue, given our understanding that the Gazette is printed every two weeks with a one week deadline for input.

From the Environment Canada "Overview Paper" we see that there seems to be some doubt as to whether the Minister can actually amend the DSL and NDSL from time to time in order to correct errors, make changes and facilitate application of the regulations. We do not interpret the Act in this way and we believe that such amendments are certainly within the Minister's power. However, to remove any uncertainty **CCPA recommends** adoption of an amendment that would clearly permit the timely amendment of the lists in order to correct errors, make updates and facilitate application of the regulations. This power should be vested directly or indirectly in the Director so that it could be exercised in a timely way.

3. Section 17 Provisions:

Under Section 17 there is a need to simplify the reporting for pest control products and foods and drugs which are governed by other legislation. It would be better to place the control of these types of substances under the specific Acts that regulate them rather than splitting the jurisdiction and having these substances covered by CEPA as well as by other acts. This is the approach taken in Section 26(3) concerning notification and assessment provisions for new substances which provides that if there is a similar notification system for a substance that is regulated under any other Act of Parliament that it is exempt from the Environment Canada notifications provisions under CEPA. **CCPA recommends** that Section 17 be modified to incorporate a similar provision so that, to the extent substances regulated under other legislation require reporting of information indicating that the substance is toxic, those reports would be dealt with under that legislation and should not also be required under CEPA, Section 17.

THE END

February 1996

* ATTACHMENTS

1. December 1995 Media Backgrounder on Government Response
2. ICCA Risk Principles Paper
3. Industry Principles on Cost Recovery and Government Response
4. November 1993 letter, "CBI Claims & Resource Constraints: The Case Against 'Up Front' Substantiations"

* These attachments are not provided with all copies of this brief and if you wish to obtain them, please contact CCPA attention Glenda Murray.

IT IS STILL ABOUT OUR HEALTH



A Response to the Government Proposal to Reform the Canadian Environmental Protection Act

**A submission to the Government of Canada on behalf of
the organizations listed at the end of the submission**

March, 1996

Dear Messrs. Chrétien and Marchi:

When the government released its proposal to amend the Canadian Environmental Protection Act (CEPA) in December 1996, Canadians expected a strategy demonstrating federal regulatory leadership. Instead, the federal government has accepted a weakened role in a number of important areas, such as the ability to control new genetically engineered products and international air pollution. Canadians also expected comprehensive standards and legal tools to protect people's health and the environment. Instead, the government's proposal fails to implement aggressive prevention and regulation of toxic chemicals and does not guarantee Canadians a role in environmental decision-making.

Environmental leadership, comprehensive health and environmental standards, and environmental rights must be the priority of the federal government in environmental protection and a renewed Canadian Environmental Protection Act.

We ask that you keep your commitment for a strong, renewed CEPA.

Signed,

Signatories of this submission



BACKGROUND

When CEPA was proclaimed in 1988, a Parliamentary Committee was required to review the Act within five years. In 1994, the Standing Committee on Environment and Sustainable Development travelled the country hearing from hundreds of witnesses on the weaknesses and potential of CEPA. In June of 1995, the Committee released its report, entitled: "It's About Our Health! Towards Pollution Prevention." This massive 365-page report contained 141 recommendations that called for a total revamping of CEPA and an ambitious agenda for the federal government to protect the health and environment of Canadians.

Despite the Committee's recommendations, industry and pro-industry departments — like Natural Resources Canada, Industry Canada and Agriculture Canada — attempted to discredit the Standing Committee's report. Their efforts contributed to the tabling of a weak, dilute government response to the report. The government response, entitled: "Environmental Protection Legislation Designed for the Future — A Renewed CEPA" which was released on December 15, 1995, does not reflect the breadth and scope of the Committee recommendations.

When reviewing the government response, it is necessary to ask: Will reforms proposed give Canada state of the art environmental legislation? Will the law allow Canadians to deal with new problems such as addressing chemicals that disrupt endocrine systems in animals and humans? Will it implement new approaches like pollution prevention planning and toxic use reduction? Our response to these questions is outlined on the pages following.

ABOUT THIS SUBMISSION

This submission was sponsored by the member groups of the Toxics Caucus Steering Committee of the Canadian Environmental Network (CEN).

Special thanks for the support of the Canadian Environmental Network, the Canadian Environmental Law Association, the Canadian Institute for Environmental Law and Policy, the Laidlaw Foundation, NetEffect Communications, and Environment Canada.

The interpretations, views and ideas expressed in this report represent the views of the signatories and not necessarily those of the CEN, its member groups funding organizations, their trustees or officers.

This submission is a summary document. Many groups have submitted more in-depth submissions on various issues in the government response. The Canadian Environmental Law Association and the Canadian Institute for Environmental Law and Policy have submitted a detailed submission in this regard which elaborated on the issues discussed in this document.

GOVERNMENT RESPONSE WEAKENS CEPA IN THESE AREAS

1. Biotechnology

What is Needed — CEPA's biotechnology provisions must be strengthened and applied to all biotechnology products which may enter the environment. New provisions should require that the long-term, cumulative and indirect environmental and human health effects of biotechnology products be assessed and provide for public participation in decision-making regarding biotechnology. Environment Canada and Health Canada should administer biotechnology regulations.

Failure of Government Response — The government's response proposes a biotechnology part in CEPA, but its primary purpose would be to exempt from the requirements of CEPA products which are, or may be, regulated under other acts. The current minimum standards for health and environment assessments of all biotechnology products established by CEPA would be eliminated. The "safety net" provided by the current Act would also be weakened. Instead of the current situation, in which CEPA applies to a product if a regulation requiring notification and assessment of potential toxicity has not been made under another Act, CEPA would only apply where there is no potential to make a regulation related to biotechnology under another Act.

2. International Air and Water Pollution

What is Needed — The federal government must take concerted action to arrest international air and water pollution, including toxic air pollution, greenhouse gases and acid-causing emissions. Although cooperation should be sought with provinces and territories, the government must exercise its full authority when there is justification to act.

Failure of Government Response — The government response establishes an untenable framework that will limit any federal attempts to deal with international air and water pollution. The effect of the proposal is to give provinces a veto over the development of programs to curb regional or global air and water problems. For example, the goal of stabilizing greenhouse gases at 1990 levels by the year 2000 cannot be achieved under the proposed framework.

GOVERNMENT RESPONSE FAILS TO STRENGTHEN CEPA IN THESE AREAS

3. Environmental and Worker Rights

What is Needed — A federal environmental bill of rights is needed. This bill would give the public and workers specific rights: to gain access to important information; to get notice of and participate in environmental decisions; allow workers the right to refuse to pollute; and give the public the right to sue when CEPA is being violated. The provision for "whistleblower" protections included in the government response should be retained in any reformed CEPA. Canadians should have the right to know what pollutants, and in what quantities, are being discharged in their communities, including pollutants being transferred off-site for recycling, recovery or disposal.

Failure of Government Response — The government response does not provide for an environmental bill of rights or any meaningful expansion of public participation rights. It does not ensure the public will have an opportunity to participate in environmental decisions or provide the tools to allow the public to make government more accountable. It does propose a provision that would allow citizens to sue violators of CEPA; however, the conditions imposed on this right are too strict. The government's proposal for a publicly accessible environmental registry of decisions is necessary and supportable, and should be expanded and enhanced. While the National Pollutants Release Inventory is proposed to be legislated, the release and transfer data required is far too limited.

4. Toxic Substances and Pollution Prevention

What is Needed — Pollution prevention requirements, namely planning and reporting, must apply to more substances, classes of substances, and industrial, commercial, and consumer activities. The implementation of pollution prevention, with provincial collaboration, would be facilitated through the development of a pollution prevention clearinghouse, funded via fees charged on the use and release of toxic substances. There should be a comprehensive re-examination of the way pollution prevention is being implemented under the federal authority.

Inherently toxic substances, such as those that persist and accumulate in fat tissue, should be automatically declared "toxic" for

regulatory purposes. In addition to persistent and bioaccumulation as criteria for automatically deeming a substance "toxic," other important criteria should trigger a declaration of "toxic." For instance, a substance may have the ability to disrupt the endocrine system at extremely low doses and without any bioaccumulation being involved. New chemicals which persist, bioaccumulate, or are otherwise inherently "toxic" should not be permitted to be manufactured or used in Canada. Mechanisms should also be included to manage the transition and provide appropriate support for workers and community as industry moves to cleaner production processes.

Failure of Government Response — There is no clear commitment to phase out the production and use of substances which are inherently dangerous, for instance substances which are persistent, which bioaccumulate, or which disrupt the endocrine system. Substances with toxic properties such as toluene may still be declared "non-toxic" under CEPA because of the onerous task of having a substance declared "toxic" as defined by CEPA. The 23,000 toxic substances in commercial use in Canada cannot be assessed and regulated in a reasonable period of time under the present proposal. Pollution prevention planning for all toxic or hazardous substances is not mandatory, but rather at the discretion of the Minister and applicable only to those handful of substances declared "toxic" under CEPA.

5. Hazardous Waste and Non-Hazardous Solid Waste

What is Needed — The import and export of hazardous waste and non-hazardous solid waste should be phased out. The export of hazardous waste for recycling to non-OECD countries should be banned by the year 1997 as per the Basel Convention.

Failure of Government Response — Despite giving clear power to the federal government to control imports and exports of solid waste, the proposal provides for the exercise of this authority only in the cases where there is an international agreement to which Canada is a party.

6. Air Pollution and Vehicle Emissions

What is Needed — CEPA should provide Environment Canada with the authority to set strict emission standards on all new vehicles by transferring legislative authority to control vehicle emissions from the Motor Vehicle Safety Act to CEPA. In addition, CEPA should contain enforceable air standards for a variety of toxic pollutants.

Failure of the Government Response — The proposal retains the status quo. It intends only to examine the option of having Environment Canada set vehicle emission standards. There are no commitments for developing enforceable air standards.

7. Putting the Federal House in Order

What is Needed — To date, the federal government has failed to adequately address the impact of its own operations. Rather than relying on voluntary actions, the government must affirm its duty to make regulations with respect to federal works, lands and undertakings and the operations of federal departments and crown corporations.

Failure of Government Response — The proposal makes few commitments to take any action.

8. Other Areas

There are a number of issues that the proposal hardly mentions or adds little to the existing CEPA. These issues include biodiversity, protection of coastal zones and emergency preparedness, among others, which are specifically addressed in more detailed submissions.

GOVERNMENT RESPONSE IMPROVES CEPA IN THESE AREAS

(a) **Enforcement** — While the proposals put forward should be supported, they should also be enhanced to ensure a strong federal enforcement role. However, strengthening the enforcement framework of CEPA alone will not ensure regulatory compliance of CEPA. The government response did not address the need to restructure Environment Canada to ensure the greater use of prosecutions in the achievement of regulatory compliance. Moreover, the Attorney General's power to intervene to stay private prosecutions should be subject to specific guidelines to ensure there is no potential to abuse this broad discretionary power. Unless these two key components of the Standing Committee's recommendation are adopted, it is unlikely that there will be an improvement in CEPA's weak enforcement record.

(b) **Ocean Dumping** — The government proposes to increase protection of Canada's oceans. However, the proposals should be further strengthened by allowing a longer objection period in cases where the government grants an ocean dumping permit. Furthermore, using the pollution prevention approach, CEPA should require ocean dumping applicants to show there are no means of avoiding the creation of the dumped waste in the first place, rather than only having to make efforts to recycle or treat wastes, as is proposed in the amendments to CEPA.

THE NEXT STEPS

We are asking Messrs. Chrétien and Marchi to move ahead and enact a new, comprehensive and stronger CEPA. This direction can be heard from Canadians across Canada. It was a commitment outlined in the Liberal Plan, "Creating Opportunity," and it was strongly recommended by the Standing Committee on Environment and Sustainable Development. By early 1997, there should be a new CEPA, one that will protect the Canadian environment and the health of all Canadians. The fundamentally important decisions of how CEPA should be reformed now rest in the hands of Messrs. Chrétien and Marchi.

ENDORSEMENT OF DOCUMENT

The following groups support the recommendations outlined in this document and wish to be acknowledged as having made a formal submission to the document, "CEPA Review: The Government Response — Environmental Protection Legislation Designed for the Future — A Renewed CEPA." We are all committed to a strong new CEPA that will protect both environmental and human health for present and future generations of Canadians.

Action! Environment, NFLD	Citizens Environment Alliance of
Alberta Federation of Labour, AB	Southwestern Ontario, ON
Allergy Foundation of Canada, SK	Citizens for Renewable Energy, ON
Amis de l'environnement de	Citizens' Network on Waste
Brandon, PQ	Management, ON
Animal Alliance, ON	Clean North, ON
APT Environment, ON	Clean Nova Scotia Foundation, NS
Banff Recycling Society, AB	Coalition of Ontario Doctors for the
Biomedical Waste Incineration	Environment, ON
Ban/Ban Incineration; ON	Common Frontiers, ON
Bruce Peninsula Environment	Concerned Citizens of Ashfield and
Group, ON	Area, ON
Canadian Auto Workers, ON	Conservation Council of New
Canadian Auto Workers Lower	Brunswick, NB
Mainland-Environment	Cosy Covers Corporation, ON
Committee, BC	Earth Wise, ON
Canadian Environmental Law	East Coast Environmental Law
Association, ON	Association, NS
Canadian Institute for	Ecology Awareness Group
Environmental Law and	Landscape and Environment,
Policy, ON	ON
Canadian Labour Congress, ON	Environmental Coalition of Prince
Canadian Organic Growers Inc.,	Edward Island, PEI
ON	Environmental Component Public
Canadian Union of Public	Service Alliance of Canada,
Employees, ON	ON
C.A.W. Windsor Regional	Environmental Law Centre, AB
Environment Council, ON	Environmental Mining Council of
Centre for Long Term	British Columbia, BC
Environmental Action, NFLD	Environmental Resource Centre,
CHOICES!, MB	AB
Citizens' Clearinghouse on Waste	Friends of Lily Lake, AB
Management, ON	Friends of the Earth, ON

Furiously Opposed to All Dumping,
ON
Georgia Strait Alliance, BC
GREAT LAKES UNITED, PQ
Green Alternatives Institute of
Alberta, AB
Greenpeace, ON
Greensville Against Serious
Pollution, ON
Guideposts for a Sustainable
Future, ON
Hickory Falls Rate Payers
Association, ON
Housing Fairness Association, ON
Incineration Counteracts the
Environment, ON
LEARNING DISABILITIES
ASSOCIATION OF CANADA,
ON
Manitoba Federation of Labour, MB
Manitoba Future Forest Alliance,
MB
National Union of Public and
General Employees, ON
Northwatch, ON
Nova Scotia Public Interest
Research Group, NS
Ocean Voice International, ON
Ontario Federation of Labour, ON
Ontario Health Advocacy
Association, ON
Ontario Health Care, ON
Ontario Public Health Association
Environment Work Group,
ON
Ontario Streams, ON
Ontario Toxic Waste Research
Coalition, ON
Pembina Institute for Appropriate
Development, AB
Pictou Harbour Environmental
Protection Project, NS
Poetical Asylum, PEI

Pollution Probe, ON
Prairie Acid Rain Coalition, AB
Prince Edward Island Stranding
Network, PEI
Protect Our Water and
Environmental Resources,
ON
Reach for Unbleached, BC
Sierra Club of Canada, ON
Sierra Club of Eastern Canada, ON
Sierra Club Prairie Chapter, MB
St. Clair River International
Citizens' Network, ON
Stop and Tell Our Politicians
Society, AB
STOP ENVIRONMENTAL
DEREGULATION IN
CANADA, York University,
ON
Stop Incineration United in Yards
Anywhere, ON
Time To Respect Earth's Ecosystem,
MB
Toronto Environmental Alliance,
ON
Town of Pickering Waste Reduction
Committee, ON
Toxics Watch Society, AB
Tusket River Environmental
Protection Association, NS
Voice of the Earth Society, NS
Waste Not, ON
Wastewise, ON
Western Canada Wilderness
Committee, AB
Windsor & Area Coalition for
Social Justice, ON
Windsor & District Labour
Council Environment
Committee, ON
Women's Network on Health and
the Environment, ON
World Wildlife Fund Canada, ON

ADDITIONAL SIGNATORIES
TO
"IT IS STILL ABOUT OUR HEALTH"

Concerned Citizens of Manitoba, MB
Healthy Sustainable Communities Association (National
Capital Region), ON
Human Ecology Liaison People, BC
National Farmers Union, SK

For Whose Future?

A Response to the Government of Canada's Proposal for the Regulation of
Biotechnology under the Canadian Environmental Protection Act (CEPA)

Prepared for Member Organizations of
the Biotechnology Caucus of
the Canadian Environmental Network

by

Mark S. Winfield
Canadian Institute for Environmental Law and Policy

and

Brewster Kneen
British Columbia Biotechnology Circle

March 22, 1996

FOR WHOSE FUTURE?

A RESPONSE TO THE GOVERNMENT OF CANADA'S PROPOSAL FOR THE REGULATION
OF BIOTECHNOLOGY UNDER THE CANADIAN ENVIRONMENTAL PROTECTION ACT

THE FOLLOWING GROUPS SUPPORT THE RECOMMENDATIONS OUTLINED IN
THIS REPORT:

ACADIA ENVIRONMENTAL SOCIETY (NS)

ACTION ENVIRONMENT (NF)

ALBERTA WILDERNESS ASSOCIATION

ALLIANCE FOR PUBLIC WILDLIFE (AB)

ANIMAL ALLIANCE OF CANADA

B.C. DIETITIANS AND NUTRITIONISTS ASSOCIATION - BIOTECHNOLOGY

COMMITTEE

BRITISH COLUMBIA BIOTECHNOLOGY CIRCLE

BRUCE PENINSULA ENVIRONMENT GROUP (ON)

CANADIAN BIODIVERSITY INSTITUTE

CANADIAN CENTRE FOR POLICY ALTERNATIVES

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

CANADIAN INSTITUTE FOR ENVIRONMENTAL LAW AND POLICY

CANADIAN LABOUR CONGRESS

CANADIAN ORGANIC GROWERS - BIOTECHNOLOGY COMMITTEE

CANADIAN UNION OF PUBLIC EMPLOYEES

CANADIANS FOR THE ETHICAL TREATMENT OF ANIMALS

CARLETON PUBLIC INTEREST RESEARCH GROUP (ON)

CATHOLIC RURAL LIFE MINISTRY (SK)

CENTRE FOR LONG-TERM ENVIRONMENTAL ACTION IN NEWFOUNDLAND

CITIZENS AGAINST NEUROTOXINS (AB)

CITIZENS ENVIRONMENTAL ALLIANCE - SOUTHWESTERN ONTARIO

CITIZENS FOR RENEWABLE ENERGY (ON)

CLEARINGHOUSE GROUP (NB)

CONSEIL ENVIRONNEMENT DU NORD-OUEST (NB)

CONSERVATION COUNCIL OF NEW BRUNSWICK

CONSUMERS ASSOCIATION OF CANADA - BRITISH COLUMBIA BRANCH

CONSUMERS UNION OF THE UNITED STATES

COOP D'ALIMENTATION NATURELLE DE SHERBROOKE - LA GRANDE RUCHE

COUNCIL OF CANADIANS

CULTURAL SURVIVAL CANADA

ECOLOGICAL AGRICULTURE PROJECT (QC)

ECOLOGICAL FARMERS ASSOCIATION OF ONTARIO

ENVIRONMENTAL COALITION OF PRINCE EDWARD ISLAND

ENVIRONMENTAL LAW CENTRE - ALBERTA

ENVIRONMENTALLY SOUND PACKAGING COALITION (BC)

FALLS BROOK CENTRE (NB)

FARM FOLK/CITY FOLK (BC)

FÉDÉRATION NATIONALE DES ASSOCIATIONS DE CONSOMMATEURS DU QUÉBEC

FEMINIST ALLIANCE ON NEW REPRODUCTIVE AND GENETIC TECHNOLOGIES

FORD ALWARD NATURALIST ASSOCIATION (NB)

FRIENDS OF THE STIKINE SOCIETY (BC)

FUNDY ENVIRONMENTAL ACTION GROUP (NB)

GREAT LAKES UNITED

GREENPEACE CANADA

HEALTH ACTION NETWORK SOCIETY (BC)

HEMP NEW BRUNSWICK

HUMBER ENVIRONMENT ACTION GROUP (NF)

LE REGROUPEMENT ÉCOLOGISTES DE VAL D'OR ET ENVIRONS

MANITOBA NATURALISTS SOCIETY

NATIONAL FARMERS UNION (SK)

NECHAKO ENVIRONMENTAL COALITION (BC)

NORTHWATCH

NOVA SCOTIA COALITION FOR ALTERNATIVES TO PESTICIDES

OCEAN RESOURCE CONSERVATION ALLIANCE (BC)

ONTARIO HEALTH ASSOCIATION - ENVIRONMENT WORK GROUP

PEOPLE AGAINST LEPREAU 2 (NB)

POETICAL ASYLUM (PE)

RAM'S HORN (BC)

RURAL DIGNITY OF CANADA

RURAL ADVANCEMENT FUND INTERNATIONAL

SASKATCHEWAN ENVIRONMENTAL SOCIETY

SAVE (NB)

SIMON FRASER PUBLIC INTEREST RESEARCH GROUP

SUSTAINABLE AGRICULTURE ASSOCIATION (AB)

TORONTO ENVIRONMENTAL ALLIANCE

TORONTO FOOD POLICY COUNCIL

WATERLOO PUBLIC INTEREST RESEARCH GROUP (ON)

WEST COAST ENVIRONMENTAL LAW ASSOCIATION

WINDSOR AND DISTRICT LABOUR COUNCIL ENVIRONMENT COMMITTEE

WINDSOR AND AREA COALITION FOR SOCIAL JUSTICE

WOMEN'S ENVIRONMENT AND EDUCATION FOUNDATION

ZOOCHECK CANADA INCORPORATED (ON)

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Environmental Protection Legislation Designed for Whose Future?

A Response to the Proposals of the Government of Canada on the Regulation of Biotechnology Products under the Canadian Environmental Protection Act (CEPA)

I. INTRODUCTION

In June 1994 the House of Commons Standing Committee on the Environment and Sustainable Development began its review of the *Canadian Environmental Protection Act* (CEPA). A parliamentary review of the Act was mandated when it was passed in 1988. The Standing Committee conducted cross-country public hearings of CEPA between June 1994 and May 1995, and delivered its report and recommendations, entitled It's About Our Health!, in June 1995.¹

One of the areas in which the Standing Committee recommended major changes to CEPA was with respect to biotechnology. Partially in response to a proposal made by the Canadian Institute for Environmental Law and Policy (CIELAP),² the Committee recommended that a new biotechnology part for CEPA be established to provide standards and procedures for the assessment of the environmental and human health impacts of biotechnology products (Recommendations 68 and 69). The intention was that this part provide a benchmark for the evaluation of products of biotechnology, including genetically engineered plants, microorganisms, fish, and animals.

Unfortunately, the proposals regarding the regulation of biotechnology contained in the government's December 1995 response to the Standing Committee's report³ would significantly weaken the existing regulatory framework for biotechnology products established by the Act. The government's response proposes a biotechnology part in CEPA, but its primary purpose would be to exempt from the requirements of CEPA products which are, or may be, regulated under other acts. The current minimum standard for notification and health and environment assessment of all biotechnology products established by s.26(3)(a) of CEPA would be eliminated.

The "safety net" provided by the current Act would also be weakened. Instead of the current situation, in which CEPA applies to a product if a regulation requiring notification and assessment of potential toxicity has not been made under another Act, CEPA would only apply where there is no potential to make a regulation related to biotechnology under another Act.

This proposal cannot be supported. Instead, in a manner consistent with the intent of the Standing Committee's recommendations, it is proposed that a new biotechnology part be established under CEPA, which would apply to all products of biotechnology which may enter the environment, including those currently proposed to be regulated under other statutes, such as the *Seeds Act*, *Pest Control Products Act*, *Fertilizers Act*, and *Plant*

Protection Act. This new biotechnology part would establish assessment procedures and criteria for all products of biotechnology, and provide for public participation in decision-making regarding biotechnology products.

II. THE FRAMEWORK OF THE GOVERNMENT RESPONSE

1) The Protection of Public Health and The Environment vs. "Competitiveness"

The Government Response to the Standing Committee's recommendations on the regulation of biotechnology products is confusing and disturbing. On the one hand it states that "All Canadians have the right to a clean and safe environment, in order to protect their health."⁴ On the other, it states that rules and regulations exist "to ensure a level playing field for business" and to "assure that our markets are competitive."⁵

indeed, if the report of the Standing Committee was "About Our Health", the Government response seems in places more concerned about the health of biotechnology companies. The protection of public health and environmental protection appear to be secondary considerations. It is difficult to see how Canada will be able to fulfil its commitments under the *United Nations Convention on Biological Diversity*, soon to be headquartered in Montreal, if the government's position on biotechnology and environmental protection remains as articulated in the government response.

Rather than proposing standards which will permit the regulation of novel, risky, unpredictable and untested processes and products of biotechnology, in its response, the government states that it:

"wants to ensure that we have a regulatory regime in place which promotes innovation, encourages investment in biotechnology, supports technology transfer and places Canadians at a competitive advantage."⁶

To achieve this, the Government recognizes that CEPA must be amended to "allow for the promotion of biotechnology as a "green" technology."⁷

The government's emphasis on "cost-effectiveness" and "environmental protection at least cost" further indicates its willingness place economic considerations ahead of the protection of human health and the environment. "Cost" is a highly subjective term, its meaning dependent on the outlook and commitment of those using it. The protection of the environmental and public health must not be contingent on its not being an excessive cost to business.

The government backs its argument for making environmental protection conditional on "cost-effectiveness" by referring to "diminishing government resources".

However, funds are apparently available to subsidize the biotechnology industry through such programs as the \$50 million Industrial Research Assistance Program (IRAP) of the National Research Council and the \$29 million allocation for the National Biotechnology Strategy.

Recommendation:

- 1) *The protection of human health, safety and the environment should be the overriding priorities in the regulation of biotechnology by the government of Canada.*

2) The Stated Goals of Government Policy Regarding Environmental Protection and CEPA

The government states its objectives in the executive summary of Chapter One of its response to the Standing Committee's report:

"Our goal is that a renewed CEPA would: contribute to the goal of sustainable development through pollution prevention, and establish pollution prevention as the priority approach for environmental protection; use the ecosystem approach; contribute to meeting Canada's obligations under the international Convention on Biological Diversity; affirm that science is an integral part of decision-making; use the precautionary principle; apply the concept of user/producer responsibility; [and then...] acknowledge the interrelationship of economic and environmental principles..."⁶

Chapter Two states that these goals are to be achieved "at the lowest possible cost to all Canadians, including Canadian businesses."

Chapter Three, on the role of public participation in CEPA, calls for providing Canadians with "better access to information and better legislative means to take action against polluters," including the right to sue if the government does not take action. It is notable that the government calls for public action only after the fact. Despite the rhetoric about prevention, there is no mention of any democratic participation in the decision-making process, public or private, concerning activities that might lead to pollution.

The summary of Chapter Seven on biotechnology explicitly states that CEPA should address the "products" of biotechnology, calling for:

"a strong federal presence to ensure the safe and effective use of products of biotechnology and to maintain their economic potential. CEPA would continue to act as the 'safety net' for those areas not covered by other federal Acts."

There are four crucial points in this vague statement. According to the government position:

- 1) CEPA is not to have any role in determining the allocation of resources, what kind of research is undertaken or what products are produced by biotechnology. CEPA is to deal only with the consequences of what industry chooses to put on the market.
- 2) CEPA is to deal only with the products of biotechnology and not with the processes of biotechnology;
- 3) CEPA is to balance off any question of the safety of the products of biotechnology with their economic potential; and
- 4) CEPA is only to provide minimum standards and to cover only what is not already covered, [however inadequately] under existing acts [or, it must be added, ministerial jurisdictions where there are no Acts].

In order to fully understand the government's suggested approach to biotechnology, one must first look at what it refers to as the "guiding principles for an effective CEPA". The first of these principles is not environmental protection, but economic growth in the name of "sustainable development". The second principle is that CEPA "contribute to the goal of sustainable development through pollution prevention."

The document as a whole appears to define "pollution" in a narrow sense, as contamination of the environment by inert toxic (chemical) substances. There is no recognition that the environment could be also be polluted, that is, be degraded or become toxic and disease- or ill health-causing, as a result of the deliberate or accidental release of the products of biotechnology, such as genetically modified organisms. Such organisms could well be, unexpectedly, capable of destroying plant or animal food sources in addition to being directly harmful to humans and the environment.

3) Environmental Problems with Applications of Biotechnology

The specific environmental risks which have been identified in relation to biotechnology products include:

- * the creation of new pests, such as the escape of a transgenic salt tolerant rice

from cultivated fields into estuaries;

- * the enhancement of the effects of existing pests or creation of new pests through hybridization or gene transfer to related plants or microorganisms;
- * the enhancement of the effects of existing pests as a result of the selective pressures provided by plants modified for pest resistance or intensified pesticide arising in conjunction with the modification of plants for pesticide resistance;
- * infectivity, pathogenicity, toxicity or other harm to non-target species, including humans;
- * disruptive effects on biotic communities, resulting in the elimination of wild or desirable natural species through competition or interference;
- * adverse effects on ecosystem processes and functions, such as nutrient cycling;
- * incomplete degradation of hazardous chemicals by microorganisms employed in bioremediation, and waste water treatment, leading to the production of even more toxic by-products.⁹

These specific risks sometimes overshadow the more general risk of reducing biological diversity in any given ecosystem. Introduced species may, for example, disturb food-chains or habitats, which in turn will affect biodiversity.¹⁰ Biotechnology can also threaten the biodiversity through its implicit drive to breed uniformity in plants and animals, and by furthering and encouraging monocultures. These potential consequences, and the more subtle and perhaps even far more drastic environmental destruction that could be caused by slow but persistent genetic changes, induced unwittingly in the pursuit of commercial biotechnology products, do not appear to have been considered in the government's approach to the regulation of biotechnology products.

It is also important to note that these environmental and health risks are not limited to the introduction of genetically engineered or modified organisms. Naturally occurring organisms can behave as "exotic" species when introduced into ecosystems of which they are not native inhabitants as well. In addition, the introduction of a naturally occurring species into a natural habitat can have disruptive effects if the species is introduced in very high concentrations or quantities. It has also been argued that certain naturally occurring species of microorganisms that have potential to be used in bioremediation may be opportunistic human pathogens.¹¹

A dramatic illustration of the potential environmental problems associated with applications of biotechnology is currently being played out in Australia, where, in the words of the journal *New Scientist*, "an experiment involving the release of a lethal rabbit virus on an island off South Australia has gone dramatically wrong. The virus has escaped from a high-security quarantined area and reached the mainland."¹²

Australia has been fighting to control the European rabbit ever since it was introduced into Australia in 1859 to satisfy the hunting desires of Thomas Austin. Since then it has multiplied out of control and its population is now estimated at 200 to 300

million, despite all efforts to contain it.

Scientists believed the rabbit calicivirus, first seen in China in 1984, could be used to control the European rabbit and were conducting experiments under confined conditions on a small island to see if the virus could spread to domestic or native animals. When rabbits started dying on the mainland the scientists were surprised, not having any idea of how it got there. Nevertheless, they thought they could confine the virus to a small area until they found rabbits 300 km away also dying from the virus. Within a month it was reported that the escape of the deadly virus had wiped out Australia's rabbit industry because no other country would import rabbit meat from Australia, fearing further spread of the virus. One company alone had been exporting 32 tonnes of rabbit a week.

The next concern to surface was the development of an immunity to the virus by newborn rabbits that are not killed by it.¹³ Now there is concern at the impact the sudden death of the rabbits will have on the entire ecosystem of Australia. The rabbit calicivirus was not even a genetically modified organism.

The potential impacts of other applications of biotechnology also appear to have been underestimated. Researchers at the Scottish Crop Research Institute have recently discovered, for example, that "much more pollen escapes from large fields of genetically engineered oilseed rape [canola] than was predicted from earlier experiments on smaller plots. They also found that escaping pollen fertilized plants up to 2.5 km away. "We've shown that there will be gene flow further, and in much larger quantities, than was predicted."¹⁴

4) Risk Assessment and the Precautionary Principle

Having stated that it intends to protect the environment on a "least cost" basis, the government states, under the heading "Science and the Precautionary Principle", that "science is an integral part of decision making under CEPA."¹⁵ To say that "science is an integral part", however, is not the same as saying that the decision making will be based on science, and the very next sentence states that "the government is committed to a risk-based approach to decision-making." A "risk-based" approach is based on subjective and essentially comparative analyses and evaluations. Indeed, risk-based approaches to the evaluation of potential hazards have been strongly criticized as incorporating value assumptions in favour of the use of new technologies, such as biotechnology.¹⁶

The government's proposal also significantly distorts "the precautionary principle" by defining it to mean that "where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."¹⁷ This is a deliberate reversal of the essential intent of the precautionary principle, that calls for not proceeding with an action

or project if there is reason to believe the consequences might be damaging. The precautionary principle, correctly applied, also shifts the burden of proof from the potential victim to the advocate of a technology or practice.

The government, however, states that "where an activity or substance poses a serious threat or is likely to pose a serious threat . . . precautionary measures should be taken even in the face of scientific uncertainty."¹⁸ In other words, once a serious threat has been established, then, and only then, are some "precautionary measures" to be taken. Clearly such wording does not shift the burden of proof. On the contrary, it implies that as long as some unstated "precautionary measures" are taken, the project can proceed.

It might be possible to be more sympathetic to the government's approach were it not continually stated that environmental protection is to be qualified by extrinsic economic factors, such as stating that environmental protection must be ensured "in the most efficient way". Here, again, there is a subjective qualification: the measurement of "efficiency" is entirely contingent on the values and purposes of the accounting process. Are the environment and human health to be protected, or is this protection entirely contingent on it not being a business cost?

Recommendations:

Precautionary Principle

- 2) *Where there is uncertainty regarding the likely environmental or health effects of a biotechnology product, field trials and other activities which may result in the product entering the environment should not be approved.*

Reverse Onus

- 3) *The onus of proof should be on proponents of biotechnology products to prove that their products are safe and will not harm the environment or human life or health, rather than on governments and the public to demonstrate the existence of potential hazards.*

5) Pollution Prevention and Biotechnology

The Government Response also elaborates on the meaning of 'pollution prevention', saying that the government wants to shift environmental activities "towards avoiding or minimizing the creation of pollutants and wastes rather than trying to manage them or clean them up after they have been created."¹⁹ This is a commendable position -- depending, however, on what is defined as "pollutants and waste". Since the document

speaks of "toxic substances" that can be identified and labelled, it is clear again that the government definition of "pollution" does not include the processes and products of biotechnology. This is an important exclusion, and one in keeping with industry insistence that there is nothing novel about modern genetic engineering. It is also an exclusion that encourages corporations to shift their emphasis from the production of chemical substances to biological products.

Unfortunately, it does not recognize that the processes and products of biotechnology might well be causes of pollution themselves. In fact, unlike chemical pollutants, genetically-engineered life-forms are self-replicating, and able to mutate and adopt to new environments. In the long-term, they may present a greater danger to the environment and human health and conventional "toxic" substances.

6) The Role of Governments in the Promotion and Regulation of Biotechnology

Perhaps the most shocking aspect of the government's proposed approach, however, is the role it assigns to the regulatory system. This seems to have little or nothing to do with public health and environmental protection and everything to do with the promotion of commercial interests. It is not "Canadians" who will gain a "competitive advantage" from the approach which the government proposes; it is a limited number of business interests, a large percentage of which are subsidiaries of transnational corporations. But it is Canadians whose health and environment will be put at risk.

In place of a rigorous regulatory regime designed to ensure that unnecessary risks are not taken in the name of competitiveness and progress, or even in the name of "sustainable development", what is being offered is a piecemeal compilation of standards and programs inherited from a pre-biotechnological age and administered by a number of departments engaged in jurisdictional conflicts.²⁰

In shifting away from the role of regulator in the public interest to the role of business promoter, the government is not calling for the enforcement of safety standards or the exercise of the precautionary principle, but for a policy of caveat emptor, buyer beware. Such an approach is likely to be unacceptable to Canadians.

The potential for adverse environmental and health effects arising from the manufacturing and use of products of biotechnology have been widely recognized within the scientific community.²¹ The government's unwillingness to acknowledge the potential to cause harm of biotechnology products places the health, safety, and environment of Canadians at risk. In the results of public opinion research indicated that Canadians have placed a much greater emphasis on the role of governments in the protection of health, safety and the environment in relation to biotechnology products than on the promotion of the industry (**See Table 1**).²² The protection of human health and safety, and of environment of Canadians should be the overriding concern of the government of Canada in the regulation of products of biotechnology.

TABLE 1¹Table 14: LEVEL OF AGREEMENT WITH STATEMENTS
REGARDING GOVERNMENT'S ROLE IN BIOTECHNOLOGY

	Agree	Neutral	Disagree
	%	%	%
Protect the safety of workers in biotech industries	87	8	5
Determine the safety of biotech products	87	8	4
Enforce regulations on activities in biotech	84	10	5
Consult the public on regulating biotech products and uses	81	13	5
Conduct a public information campaign about biotechnology	77	14	9
Assess the benefits of biotech	76	16	7
Be involved in the ethical aspects of biotechnology	75	16	8
Educate the public by offering seminars on biotechnology	74	16	9
Financially support biotech research in companies	37	33	29
Develop biotech products for commercial purposes	33	28	37

¹. From: Optima Consultants, Understanding the Consumer Interest in the New Biotechnology (Ottawa: Industry Canada, November 1994).

III. THE EXISTING CEPA BIOTECHNOLOGY PROVISIONS

CEPA current only makes reference to biotechnology products in its definitions section and section 32, which provides authority to make a notification regulation for products of biotechnology. In effect, biotechnology products are treated as a category of new substances for the purposes of Part II of the CEPA. Section 26 of CEPA Part II, requires that notice be given to Environment Canada and Health Canada prior to the import, manufacture or sale of a new substance, and that it be assessed for whether the substance is capable for becoming "toxic," as defined for the purposes of CEPA.²³

Conditions or prohibitions on the import, manufacture, use or sale of a new substance may be imposed by the Ministers of Environment and of Health on substances "suspected of being toxic," although prohibitions on manufacturing or importation are limited to not more than two years.²⁴ If a new substance is found to be "toxic" for the purposes of CEPA, its import, manufacture, use, or sale may be regulated or prohibited through section 34 of the Act.

One of the most important aspects of the existing structure of CEPA is that it provides that all new substances are subject to pre-manufacturing, import or sale notification and assessment of "toxicity." New substances, including all products of biotechnology, can only be exempted from the requirements of CEPA in this regard if they are regulated under another act of Parliament that provides for notice to be given prior to their manufacture, import or sale, and for an assessment of whether they are "toxic" as defined by CEPA.²⁵ In effect, CEPA is intended to ensure that all substances new to Canada, including products of biotechnology, are subject to notification and assessment requirements, and that a common minimum standard of assessment is used in all assessments.

IV. WEAKNESSES IN THE EXISTING BIOTECHNOLOGY PROVISIONS OF CEPA

The Standing Committee's recommendation that new biotechnology part be added to CEPA was based on a number of considerations. These included the following.

1) The Treatment of Biotechnology Products as a Adjunct to Chemical New Substances

CEPA currently deal with products of biotechnology as an add-on to the Act's provisions regarding chemical new substances. This approach fails to recognize the special environmental and human health risks posed by biotechnology products, which distinguish them from traditional chemical substances. Two major areas of concern have been identified in this regard:

- (a) Many biotechnology products include life-forms which are self-replicating. Once released into the environment, they can reproduce, spread and mutate and transfer genetic material. The control of biotechnology products, and their genetic material, once in the environment, will therefore be difficult, if not impossible.
- (b) The technologies employed in the development of many new biotechnology products have only emerged over the past twenty years (especially recombinant DNA and cell fusion technologies). The evaluation of such products for potential environmental damage is surrounded by a great deal of uncertainty. Indeed, the scientific literature reflects wide concerns regarding the lack of adequate methodologies and data to properly assess the environmental and health effects of the products of biotechnology.²⁶

These issues need to be recognized and addressed in the government's approach to the regulation of biotechnology under CEPA.

2) Biotechnology and the CEPA "Toxic" Test

The "toxicity" test forms the basis for CEPA's regulation of new substances. New substances must be found "toxic" under the definition employed by CEPA in order to be regulated under the Act. A number of problems have been identified with the definition and application of the concept of "toxicity" under CEPA in relation to chemical substances.²⁷

Specifically with respect to products of biotechnology, the "toxicity" standard, which is rooted in chemical toxicology, provides too narrow an evaluative structure in relation to the potential scope of the effects of the use of biotechnology products. It also may be an excessively stringent test in relation to the level of uncertainty regarding the environmental and health effects of biotechnology products. This is especially true with respect to the potential long-term, indirect and cumulative environmental and health risks associated with biotechnology products, such as impacts on biodiversity.

The need to determine that a substance is "toxic" prior to its regulation under CEPA is related to particular constitutional concerns regarding the establishment of the jurisdiction of Parliament to regulate toxic chemicals. However, a strong case can be made that products of biotechnology constitute a unique and bounded subject of national concern, which cannot be dealt with effectively by the provinces acting individually or collectively. Consequently, Parliament may have the constitutional authority regulate biotechnology products through its power to legislate of the Peace, Order and Good Government of Canada, without having to establish that they are "toxic" for the purposes of CEPA. Federal jurisdiction over Agriculture,²⁸ Fisheries,²⁹ Trade and Commerce,³⁰ and Criminal Law in relation to public health,³¹ provide additional bases for the establishment of federal regulatory authority over biotechnology products.³²

3) Public Participation in Decision-Making

The existing provisions of CEPA regarding the notification and assessment of new substances, including products of biotechnology, make virtually no provision for public participation in decision-making. No notice is provided to the public when new substances enter the assessment process, or when field trials of new substances, including products of biotechnology, are conducted. Furthermore, there are no routes of appeal when a substance is added to the Domestic Substances List, when information requirements are waived, when conditions on substances "suspected of toxicity" are varied or rescinded, or when a field test of a new substance is approved. Public access to information regarding new substances, including products of biotechnology, is also extremely limited.

4) Regulation of Biotechnology Products not Regulated through CEPA

The problems related to the adequacy of the legislative framework for biotechnology products are not limited to CEPA. There are also continuing concerns over the scope of the legislative authority regarding environmental and human health evaluations of biotechnology products provided by the statutes under which Agriculture and Agri-Food Canada and other departments currently propose to regulate biotechnology products, using the CEPA section 26(3)(a) exemption through equivalent notification and assessment process mechanism. CEPA is presently the only federal regulatory statute which explicitly establishes regulatory authority in relation to biotechnology products.

In addition, many of the statutes under which it is proposed that biotechnology products be regulated contain no clear legislative authority for the evaluation of regulated products from an environmental or human health perspective. This is particularly true with respect to a number of the key agricultural statutes including the *Seeds Act*, the *Fertilizers Act*, and the *Feeds Act*. Indeed, an examination of the legislative record in relation to these statutes indicates that they were drafted primarily for the purpose of the prevention of fraud, and no reference was made to the conduct of evaluations for the purpose of the protection of the environment or human health.³³

This situation leaves significant portions of the government's proposed regulatory framework vulnerable to legal challenge. At best, the proposal to establish regulations for the environmental and human health assessment of biotechnology products under statutes which make no reference to biotechnology, and which provide no explicit authority for such evaluations amounts to a form of legislative amendment through regulation. This practice has been strongly criticized on numerous occasions by Parliamentary Committees,³⁴ and by legal and constitutional scholars.³⁵

There are also a number of additional gaps in the legislative authority provided by such statutes as the *Seeds Act*, the *Fertilizers Act* and the *Feeds Act*. These include:

- * the absence of provisions establishing legislative authority for the evaluation of biotechnology products in terms of their likely impacts on biodiversity, or the regulation of the transboundary movement of biotechnology products, despite the likely establishment of such requirements through the proposed *Biodiversity Convention* Biosafety Protocol;
- * the absence of any provisions regarding public participation in decision-making, such as notice and comment provisions regarding major decisions, or public access to information regarding new products;
- * the absence of provisions establishing or designating appellate bodies for appeals of decisions made under these Acts, or regarding standing in, or outlining procedures for, such appeals;
- * the absence of any provisions regarding civil liability for harm to the environment or human health by regulated products; and
- * weak enforcement and penalty structures in comparison to CEPA.

Beyond these legal issues, consideration must be given to the multiple roles being played by Agriculture Canada in relation to agricultural biotechnology. The Department has acted simultaneously as the lead creator, tester, promoter and regulator of agricultural biotechnology products in Canada. The conflicts of interest inherent in these promotional and regulatory functions must be recognized and addressed.

V. THE STANDING COMMITTEE'S RECOMMENDATIONS REGARDING PRODUCTS OF BIOTECHNOLOGY

In its report, the Standing Committee recommended that CEPA be amended to include a new part to deal specifically with products of biotechnology. This Part was to include minimum notification and assessment standards for all products of biotechnology released into the environment, including those regulated under other Acts. Other federal statutes should only prevail over CEPA in regard to the assessment of the environmental impact assessment of biotechnology products, if their notification, assessment and regulatory standards are at least equivalent to those prescribed in CEPA.³⁶ The Committee also recommended that CEPA be amended to require the Governor-in-Council to publish a list of statutes considered to be at least equivalent to CEPA with respect to their assessment processes for products of biotechnology.³⁷

VI. THE GOVERNMENT'S RESPONSE TO THE STANDING COMMITTEE'S PROPOSALS

The government's proposal regarding the regulation of biotechnology products under CEPA represents the most serious retrenchment contained in the government's response to the Standing Committee's report. It has the potential to endanger the health, safety and environment of Canadians by eliminating the minimum pre-manufacturing or importation environmental and health evaluation requirements for products of biotechnology currently provided by CEPA. In effect, the government is proposing to create a new biotechnology part for CEPA, but its primary purpose would be to exempt products of biotechnology from the Act's provisions. Specific comments on the government's proposals are as follows.

1) 7.1 Definition of Biotechnology

The government proposes to retain the current definition of biotechnology contained in CEPA. The current definition of biotechnology contained in CEPA is adequate and should be retained.

Recommendation:

- 4) *The current definition of biotechnology contained in CEPA should be retained.*

2) 7.2, 7.3, and 7.4 Separate Part for Live or Animate Products of Biotechnology

In these paragraphs, the government proposed to establish a new biotechnology part of CEPA, to apply to living products of biotechnology.

i) 7.2 Scope of the Proposed Biotechnology Part

The CEPA biotechnology part should be focussed on products of biotechnology which may enter the environment. In general, it should not apply to medical applications of biotechnology (i.e. diagnostic tools) except where these applications may have an impact on the environment or human health beyond the individuals to who have provided their informed consent to the application of the product.

Recommendation:

- 5) *The proposed CEPA biotechnology part should apply to all products of biotechnology which may enter the environment.*

ii) **7.3 Structure of the Proposed Biotechnology Part**

The government proposes to use the existing CEPA section 11 criteria for "toxicity" and Canada's international commitments under the *United Nations Convention on the Conservation of Biological Diversity* to establish evaluative criteria for biotechnology products under the proposed CEPA biotechnology Part.

As noted earlier, the CEPA section 11 "toxicity" concept may not capture the full range of potential human health and environmental effects of biotechnology products. The potential indirect and long-term cumulative environmental and health impacts of commercial scale uses of products of biotechnology must be considered. Particular attention should be given to the full range of impacts of the pest control and other "systems" of which biotechnology products are sometime integral parts. This must necessarily include an evaluation of the purposes of products, their efficacy, and the availability of potentially less harmful alternatives.

Recommendation:

- 6) *The evaluative criteria established by the CEPA biotechnology Part should include:*
- * potential immediate or long-term, direct or indirect, harmful effects on human life or health, including cumulative impacts and the effects of occupational exposure;*
 - * potential immediate or long-term, direct or indirect, harmful effects on the environment, including cumulative impacts;*
 - * potential immediate or long-term, direct or indirect, harmful effects on biological diversity, including cumulative impacts;*
 - * the availability and likely effectiveness of monitoring control, waste treatment and emergency response plans with respect the product;*
 - * the potential effectiveness of the product for its intended purpose; and*
 - * the availability of alternative means of achieving the product's purpose which may present lower potential for harm to the environment and human health.*

The government's proposals make no provisions for public participation in decision-making regarding products of biotechnology.

Recommendation:

- 7) *The new CEPA Biotechnology Part should make the following provisions for public participation in decision-making regarding biotechnology:*
- i) Public Notice:*
 - (a) notification, in the Canada Gazette and/or on the proposed public registry, when applications for the approval of the manufacture, use, import or export of new biotechnology products, or products containing new biotechnology products are made, , followed by a public comment period of not less than ninety days;*
 - (b) notification, in the Canada Gazette and/or on the proposed public registry, of the Ministers' decisions to approve, approve with conditions or prohibit, the import, manufacture, use, sale, export or discharge into the environment of biotechnology products, followed by a public comment period of not less than thirty days for decisions to approve or approve with conditions the import, manufacture, sale, export, or discharge into the environment of biotechnology products.*
 - (c) notification, in the Canada Gazette and/or on the proposed public registry, of ministerial intentions to vary or rescind conditions or prohibitions imposed on the use, import, manufacturing, sale, export or discharge into the environment of biotechnology products, followed by a public comment period of not less than ninety days.*
 - (d) notification, in newspapers of general circulation in vicinity of the test and on the proposed public registry, of proposals for field tests of products of biotechnology. Direct notification of the owners and occupiers of lands adjacent to the test site should also be required. A comment period of not less than sixty days should follow notice of a proposed field test.*

ii) Notices of Objection

Members of the public should be permitted to file notices of objections under the following circumstances:

- (a) following public notice of the Ministers' decisions to approve, approve with conditions or prohibit, the import, manufacture, use, sale, export or discharge into the environment biotechnology products;*
- (b) following public notice of the Ministers' intention to vary or rescind conditions or prohibitions imposed on the use, import, manufacturing, sale, export or discharge into the environment of a biotechnology product;*
- (c) following public notice of proposals for field tests of products of biotechnology.*

Boards of Review should be required to be established unless the request is frivolous or vexatious, approvals should be suspended until any notice of objection is resolved, and intervenor funding should be provided for bona fide public interest intervenors.

iii) Access to Information

The public should be provided to the information submitted in response to the to the information requirements regarding new biotechnology products in a manner consistent with the following principles:

- * the definition of what can be kept confidential be narrowed to include only "trade secrets;"*
- * the claimant for confidentiality be required to provide supportive evidence of confidentiality when making a claim;*
- * requests for confidentiality on the identities of substances which will, or may, enter the environment, not be permitted;*
- * requests for confidentiality should not be permitted regarding information on toxicology, ecological effects, epidemiology or health and safety studies;³⁸ and*
- * there be a public appeal process regarding determinations that information is confidential.*

iv) *Biotechnology Release Database*

The biotechnology part of CEPA should also provide for the establishment of a data-base on the environmental release of all biotechnology products in Canada. Such a data base would be of assistance to governments, researchers, and other members of the public in assessing the overall use and effects of biotechnology products released into the Canadian environment. All environmental releases should be required to be entered into the data base, and members of the public should have direct access to the data base.

iii) **7.4 Application of the new CEPA Biotechnology Part**

The current CEPA provisions require that all products of biotechnology be regulated either under CEPA or another Act of Parliament which provides for pre-manufacturing or import notification and an assessment of potential "toxicity." The government's proposal would weaken this standard in three ways.

First, the government's proposal states that the new CEPA part would not apply to products of biotechnology that may be regulated under other Acts of Parliament. This means that products would be exempted from the CEPA requirements on the basis of a potential to be regulated under another Act, and not the actual existence of notification and assessment regulations equivalent to those made under CEPA, as is presently the case. In practice, this provision would mean that it would be unlikely that the new CEPA biotechnology part would actually apply to any products of biotechnology, including those currently expected to be regulated under the proposed the CEPA *New Substances Notification Regulation Part III - Biotechnology Products*, such as microorganisms used in bioremediation, mining, waste-water treatment, and other applications.

Secondly, the government's proposal suggests that there may be "circumstances where (notification and assessment) regulations are not required" for biotechnology products. This means that there may be categories of products of biotechnology which are left unregulated from an environmental and human health perspective.

Third, under the government's proposal, CEPA would no longer provide a benchmark standard of assessment for products of biotechnology regulated under other Acts of Parliament. Different standards of notification and assessment would apply to different products of biotechnology depending upon under which other Act of Parliament they fall. Any consistency in notification and assessment processes for biotechnology products in Canada would be lost.

The government's proposal is clearly a major step backwards from the existing

provisions of CEPA. It is a distortion of the intent of the Standing Committee's recommendation, which has the potential to endanger the lives, health and environment of Canadians and to undermine any consistency in the regulation of products of biotechnology in Canada. It must be rejected for these reasons.

Furthermore, conflicts of interests inherent in the promotion and regulation of biotechnology by Agriculture and Agri-Food Canada in relation to agricultural biotechnology must be recognized. The past 30 years provide numerous examples of the consequences of giving the same government agency responsibility for simultaneously regulating and promoting an industry. The role of the Federal Department of Fisheries and Oceans in the destruction of the East Coast groundfish fishery in Atlantic Canada provides an obvious illustration these perils.³⁹

It was these kinds of considerations that lead to government transfer responsibility for the regulation of agricultural pesticides from Agriculture Canada to Health Canada last year. Over the years, Agriculture Canada's active promotion of the use of pesticides in agriculture undermined its credibility as an evaluator and regulator of their health, safety and environmental impacts.⁴⁰

The same logic must be applied to the situation regarding agricultural biotechnology products. Agriculture Canada cannot simultaneously play the role of promoter and regulator of genetically altered plants, microorganisms and animals. Regulatory responsibilities regarding biotechnology products must be transferred to non-promotional agencies of the government if the health, safety and environment of Canadians is to be protected.

Recommendation:

- 8) *The new biotechnology part for CEPA should apply to all products of biotechnology which may enter the environment, without exception, including those currently proposed to be regulated under other Acts of Parliament, such as the Seeds Act, Pest Control Products Act, Fertilizers Act, and Feeds Act. The new CEPA biotechnology, and regulations made under it, should be administered by Environment Canada and Health Canada.*

3) 7.5 Cost Recovery and the Issuing of Permits

The government's proposals on this issue address two distinct issues. The first is to establish authority for setting fees for services provided to Canadians in relation to CEPA regarding biotechnology products, such as the conduct of notification and assessment procedures, the issuing of permits, and the monitoring of the environmental and health effects of activities authorized under permits. These proposals deserve strong support. They are consistent with the polluter pays principle, and provide a means of ensuring that Environment Canada and Health Canada's capacity to assess and oversee the importation, manufacturing, testing, sale and use of biotechnology products in Canada is maintained.

Recommendation:

- 9) *The new CEPA biotechnology part should include authority for the imposition of a full-cost-recovery, user-pay system for the processing of notification and assessment information, the approval and monitoring of field trials of products on biotechnology, and monitoring related to conditions imposed on the import, manufacture, use, sale, or export or products of biotechnology.*

The government also proposes to establish clear authority for the issuing of permits relative to the importation, testing, manufacturing or use of biotechnology products that are regulated under CEPA. This proposal appears to be consistent with the Canadian Institute for Environmental Law and Policy's recommendation to the Standing Committee that the process for granting approvals for field trials, and the import, sale, manufacturing or use of products of biotechnology be clarified.⁴¹ Implicit in this proposal is a separation of federal regulatory authority over biotechnology products from a finding of "toxicity" under CEPA.

Recommendation:

- 10) *The CEPA biotechnology part should establish clear authority for the issuing of permits relative to the importation, testing, manufacturing or use of biotechnology products that are regulated under CEPA. This authority should include the capacity to:*
- * approve the testing, manufacture, use, processing, release or discharge into the environment, sale, offering for sale, import or export of the new biotechnology product and products containing the new biotechnology product without conditions;*
 - * approve the testing, manufacture, use, processing, release or discharge into the environment, sale, offering for sale, import or export of the new biotechnology product and products containing the new biotechnology product subject to any conditions which the minister chooses to impose; or*
 - * impose a total, partial, or conditional prohibition on the testing, manufacture, use, processing, release or discharge into the environment, sale, offering for sale, import or export of the biotechnology product or a product containing the new biotechnology product.*

4) 7.6 International Commitments

The government proposes to provide authority to make regulations necessary to implement agreements made under international protocols and conventions, where regulations do not exist under other federal Act. The limited focus of the discussion of this matter to "transboundary movements of live products of biotechnology" which "could have an adverse effect on biological diversity," is disappointing. The provisions of the *Convention on Biological Diversity* clearly give rise to a much wider range of issues related to biotechnology and biodiversity, and the precise scope of the proposed Protocol on Biosafety under the Convention is yet to be determined.

Notwithstanding these limitations, authority to implement international commitments in relation to products of biotechnology which may enter the environment should be provided through CEPA. As Environment Canada and Health Canada would be lead agencies responsible for the environmental and health regulation of biotechnology products, the CEPA biotechnology part should be the government's primary vehicle for the implementation of such commitments.

Recommendation:

- 11) *The CEPA biotechnology part should provide authority to make regulations to implement international agreements regarding biotechnology to which Canada is a Party.*

5) 7.7 Application to Pollution Prevention

The government proposes to provide authority in CEPA to set criteria for the effective and safe use of live products of biotechnology in pollution prevention where regulatory authority does not exist under other federal Acts. The rationale for this provision is unclear, as the necessary authority to deal with such products would be provided elsewhere in the proposed CEPA biotechnology part. As noted earlier, there are serious concerns regarding the portrayal of biotechnology as an "environmentally friendly" technology.

6) 7.8 Agreements to Develop, Gather, and Share Data on Biotechnology

The government proposes to provide authority in a renewed CEPA for the Ministers of the Environment and of Health to enter into bilateral, multilateral and international agreements to develop, gather and share data on biotechnology. This seems a useful and necessary provision.

Recommendation:

- 12) *CEPA should be amended to provide the Ministers of the Environment and of Health the authority to enter into bilateral, multilateral and international agreements to develop, gather and share data on biotechnology.*

VII. CONCLUSIONS

The government's proposal for a new biotechnology part for CEPA would significantly weaken the provisions of the existing Act as they apply to biotechnology. The minimum standards for notification and assessment of toxicity for all products of biotechnology currently provided for by CEPA would be eliminated. The application of the proposed CEPA biotechnology part would also be much narrower than is currently the case. In effect, the government is proposing a biotechnology part which would be unlikely to actually apply to any products of biotechnology, and would not set a standard of

assessment for environmental and human health evaluations of biotechnology products under other Acts.

This proposal is inconsistent with the intent of the Standing Committee's recommendations regarding the regulation of biotechnology under CEPA, and could potentially endanger the health, safety and environment of Canadians. Consequently, the government's proposal cannot be supported.

As an alternative, it is proposed that, consistent with the intent of the Standing Committee's recommendations on the regulation of biotechnology products under CEPA, a new biotechnology part be established under the Act. The new CEPA biotechnology part would:

- * apply to all products of biotechnology which may enter the environment, including those which the government currently proposes to regulate under other Acts, such as the *Seeds Act*, the *Pest Control Products Act*, and the *Fertilizers Act*.
- * establish requirements for the assessment of biotechnology products in terms of their:
 - * potential immediate or long-term, direct or indirect effects on human life and health, the environment, and biodiversity;
 - * potential effectiveness of the products for their intended purposes; and
 - * the availability of alternative means of achieving products purposes which may present lower potential for harm to the environment and human health;
- * provide for public participation in decision-making regarding biotechnology products, including:
 - * public notice of major decisions regarding biotechnology products;
 - * public notice of proposed field tests of biotechnology products;
 - * opportunities to appeal government decisions regarding biotechnology products, including the approval of field tests; and
 - * enhanced access to information regarding products of biotechnology;
- * provide authority to implement international environmental agreements regarding products of biotechnology;
- * provide for the establishment of a database of environmental releases of products of biotechnology in Canada; and
- * provide for establishment of a full-cost-recovery, user-pay system for the processing of notification and assessment information, the approval and monitoring of field trials of products on biotechnology, and monitoring related to conditions imposed on the import, manufacture, use, sale, or export of products of biotechnology.

This proposal for the establishment of a separate biotechnology part of CEPA is intended to provide the basis of a regulatory structure for biotechnology products which would ensure the protection of environmental integrity and human health, and strengthen public confidence in the government of Canada evaluative and regulatory processes for these products.

SUMMARY OF RECOMMENDATIONS

- 1) *The protection of human health, safety and the environment should be the overriding priorities in the regulation of biotechnology by the government of Canada.*
- 2) *Where there is uncertainty regarding the likely environmental or health effects of a biotechnology product, field trials and other activities which may result in the product entering the environment should not be approved.*
- 3) *The onus of proof should be on proponents of biotechnology products to prove that their products are safe and will not harm the environment or human life or health, rather than on governments and the public to demonstrate the existence of potential hazards.*
- 4) *The current definition of biotechnology contained in CEPA should be retained.*
- 5) *The proposed CEPA biotechnology part should apply to all products of biotechnology which may enter the environment.*
- 6) *The evaluative criteria established by the CEPA biotechnology Part should include:*
 - * *potential immediate or long-term, direct or indirect, harmful effects on human life or health, including cumulative impacts and the effects of occupational exposure;*
 - * *potential immediate or long-term, direct or indirect, harmful effects on the environment, including cumulative impacts;*
 - * *potential immediate or long-term, direct or indirect, harmful effects on biological diversity, including cumulative impacts;*
 - * *the availability and likely effectiveness of monitoring control, waste treatment and emergency response plans with respect the product;*
 - * *the potential effectiveness of the product for its intended purpose; and*
 - * *the availability of alternative means of achieving the product's purpose which may present lower potential for harm to the environment and human health.*
- 7) *The new CEPA Biotechnology Part should make the following provisions for public participation in decision-making regarding products of biotechnology:*
 - i) *Public Notice:*
 - (a) *notification, in the Canada Gazette and/or on the proposed public registry, when applications for the approval of the manufacture, use, import or export of new biotechnology products, or products*

containing new biotechnology products are made, , followed by a public comment period of not less than ninety days;

- (b) notification, in the Canada Gazette and/or on the proposed public registry, of the Ministers' decisions to approve, approve with conditions or prohibit, the import, manufacture, use, sale, export or discharge into the environment of biotechnology products, followed by a public comment period of not less than thirty days for decisions to approve or approve with conditions the import, manufacture, sale, export, or discharge into the environment of biotechnology products.*
- (c) notification, in the Canada Gazette and/or on the proposed public registry, of ministerial intentions to vary or rescind conditions or prohibitions imposed on the use, import, manufacturing, sale, export or discharge into the environment of biotechnology products, followed by a public comment period of not less than ninety days.*
- (d) notification, in newspapers of general circulation in vicinity of the test and on the proposed public registry, of proposals for field tests of products of biotechnology. Direct notification of the owners and occupiers of lands adjacent to the test site should also be required. A comment period of not less than sixty days should follow notice of a proposed field test.*

ii) Notices of Objection

Members of the public should be permitted to file notices of objections under the following circumstances

- (a) following public notice of the Ministers' decisions to approve, approve with conditions or prohibit, the import, manufacture, use, sale, export or discharge into the environment biotechnology products;*
- (b) following public notice of the Ministers' intention to vary or rescind conditions or prohibitions imposed on the use, import, manufacturing, sale, export or discharge into the environment of a biotechnology product;*
- (c) following public notice of proposals for field tests of products of biotechnology.*

Boards of should be required to be established unless the request is frivolous or vexatious, approvals should be suspended until any notice of objection is resolved, and intervenor funding should be provided for bona fide public interest intervenors.

iii) Access to Information

The public should be provided to the information submitted in response to the to the information requirements regarding new biotechnology products in a manner consistent with the following principles:

- * the definition of what can be kept confidential be narrowed to include only "trade secrets;"*
- * the claimant for confidentiality be required to provide supportive evidence of confidentiality when making a claim;*
- * requests for confidentiality on the identities of substances which will, or may, enter the environment, not be permitted;*
- * requests for confidentiality should not be permitted regarding information on toxicology, ecological effects, epidemiology or health and safety studies; and*
- * there be a public appeal process regarding determinations that information is confidential.*

iv) Biotechnology Release Database

The biotechnology part of CEPA should also provide for the establishment of a data-base on the environmental release of all biotechnology products in Canada. Such a data base would be of assistance to governments, researchers, and other members of the public in assessing the overall use and effects of biotechnology products released into the Canadian environment. All environmental releases should be required to be entered into the data base, and members of the public should have direct access to the data base.

- 8) *The new biotechnology part for CEPA should apply to all products of biotechnology which may enter the environment, without exception, including those currently proposed to be regulated under other Acts of Parliament, such as the Seeds Act, Pest Control Products Act, Fertilizers Act, and Feeds Act. The new CEPA biotechnology, and regulations made under it, should be administered by Environment Canada and Health Canada.*
- 9) *The new CEPA biotechnology part should include authority for the imposition of a full-cost-recovery, user-pay system for the processing of notification and assessment information, the approval and monitoring of field trials of products on*

biotechnology, and monitoring related to conditions imposed on the import, manufacture, use, sale, or export of products of biotechnology.

- 10) *The CEPA biotechnology part should establish clear authority for the issuing of permits relative to the importation, testing, manufacturing or use of biotechnology products that are regulated under CEPA. This authority should include the capacity to:*
 - * approve the testing, manufacture, use, processing, release or discharge into the environment, sale, offering for sale, import or export the new biotechnology product and products containing the new biotechnology product without conditions:*
 - * approve the testing, manufacture, use, processing, release or discharge into the environment, sale, offering for sale, import or export of the new biotechnology product and products containing the new biotechnology product subject to any conditions which the minister chooses to impose; or*
 - * impose a total, partial, or conditional prohibition on the testing, manufacture, use, processing, release or discharge into the environment, sale, offering for sale, import or export of the biotechnology product or a product containing the new biotechnology product.*
- 11) *The CEPA biotechnology part should provide authority to make regulations to implement international agreements regarding biotechnology to which Canada is a Party.*
- 12) *CEPA should be amended to provide the Ministers of the Environment and of Health the authority to enter into bilateral, multilateral and international agreements to develop, gather and share data on biotechnology.*

ENDNOTES

1. House of Commons Standing Committee on Environment and Sustainable Development It's About Our Health! Towards Pollution Prevention (Ottawa: House of Commons, June 1995).
2. See M. Winfield and B. Mausberg, "CEPA, Chemical New Substances, and Biotechnology," in M. Winfield, ed., Reforming the Canadian Environmental Protection Act: A Submission to the Standing Committee on Environment and Sustainable Development (Toronto: Canadian Institute for Environmental Law and Policy, September 1994).
3. Environmental Protection Legislation Designed for the Future - A Renewed CEPA/A Proposal (Ottawa: Government of Canada, 1995).
4. Ibid., p.4.
5. Ibid., pg.5.
6. Ibid., p.51.
7. Ibid., p.53.
8. Ibid., p.7.
9. J.M. Tiedje, R.K. Colwell, Y.L. Grossman, R.E. Hodson, R.E. Lenki, R.N. Mack, and P.J. Regal, "The Planned Introduction of Genetically Engineered Organisms: Ecological Considerations and Recommendations," Ecology 1989, Vol. 20, No. 2 p. 301. See also E. Smit, J.D. van Elsas, and J.A. van Veen, "Risks Associated with the Application of genetically modified microorganisms in terrestrial ecosystems," FEMS Microbiology Reviews 88 (1992), 263-278, and M. Mellon and J. Rissler, Perils Amid the Promise: The Ecological Risks of Transgenic Crops on a Global Market (Washington, D.C.: Union of Concerned Scientists, 1994).
10. D. Pimentel, M.S. Hunter, J.A. LaGro, R.A. Efroymson, J.C. Landers, F.T. Mervis, C.A. McCarthy, and A.E. Boyd. "Benefits and Risks of Genetic Engineering in Agriculture", Bioscience (1989), Vol.39, No.9, pp.606-614, at 609.
11. Ernst and Young and Bio-Industry Council, A Brief Examination of the Bioremediation Industry Final Report (Ottawa: Environment Canada, June 1994), p.38.
12. New Scientist, October 21, 1995.
13. New Scientist, November 11, 1995.

14.New Scientist, November 4, 1995.

15.Environmental Protection Legislation Designed for the Future, p.15.

16.On this issue, see, for example, C.G. Brunk, L.Haworth, B.Lee, Value Assumptions in Risk Assessment: A Case Study of the Alachlor Controversy (Waterloo: Wilfred Laurier University Press, 1991). See, also M.Winfield, "Risk Assessment in Environmental Policy-Making," paper presented at the Queen's University School of Policy Studies Symposium on Regulatory Efficiency/Risk Assessment, October 1995.

17.Environmental Protection Legislation Designed for the Future, pg. 15.

18.Environmental Protection Legislation Designed for the Future, p.15.

19.Ibid., pg.44.

20.In his history of modern biotechnology, Robert Bud comments that, "Regulatory Conflicts have been exacerbated by conflicts between agencies. Just as departments within national governments have squabbled for the right to promote biotechnology, so the question of whose regulations should apply has been contested to the point of absurdity...To civil servants, the definition of biotechnology has become a matter of money and power," Robert Bud, The Uses of Life (Cambridge: Cambridge University Press, 1993), pg.212.

21.See, for example, The Ecological Society of America, "The Release of Genetically Engineered Organisms into the Environment."

22.See Optima Consultants Understanding the Consumer Interest in the New Biotechnology (Ottawa: Industry Canada, November 1994), Table 14.

23.According to s.11 of CEPA a substance is considered "toxic" for the purposes of the Act if "it is entering or may enter the environment in a quantity or concentration or under conditions

- a) having or that may have an immediate or long-term harmful effect on the environment;
- b) constituting or may constitute a danger to the environment on which human life depends; or
- c) constituting or may constitute a danger in Canada to human life or health."

24.CEPA, s.29.

25.Ibid., s.29(3)(a).

26. Ecological Society of America, "The Release of Genetically Engineered Organisms into the Environment: A Perspective from the Ecological Society of America," Ecology Vol. 20, No.2, April 1989.
27. See Standing Committee on Environment and Sustainable Development, It's About Our Health!, Chapter 5.
28. *The Constitution Act*, 1982, s.95.
29. Ibid., s.91(12).
30. Ibid., s.91(2).
31. Ibid., s.91(27). See *Re Canada Metal Co. Ltd., and the Queen*, (1982) D.L.R.(3d) 124 (Man Q.B.).
32. For a detailed discussion of this issue see Winfield and Mausberg, "CEPA, Chemical New Substances and Biotechnology," pp.20-21.
33. See the Hon. D. Harkness, Minister of Agriculture, House of Commons Debates June 29, 1959 on the occasion of the second reading debate of the current version of the *Seeds Act*.
34. see, for example, Standing Joint Committee of the Senate and House of Commons on Regulations and Other Statutory Instruments, Fourth Report (1980) para 81 and Appendix II).
35. See, for example, D.P. Jones and A.S. de Villars, Principles of Administrative Law (Toronto: Carswell, 1985)).
36. Standing Committee on Environment and Sustainable Development, Its About Our Health!, Recommendation 68.
37. Ibid., Recommendation 69.
38. CEPA s.20(1)(f) only allows releases of summaries of this type of information.
39. K.Cox, "A calamity of biblical proportions," The Globe and Mail, December 21, 1993.
40. See: Pesticide Registration Review Task Force, Recommendations for a Revised Federal Pest Management Regulatory System: Final Report (Ottawa: Supply and Services Canada, December 1990); and Pest Management Secretariat, Government Proposal for the Pest Management Regulatory System (Ottawa: Government of Canada, October 1994)

41. Winfield, ed., Reforming CEPA, Recommendations 33 and 39.

CANADIAN MANUFACTURERS OF CHEMICAL SPECIALTIES ASSOCIATION



L'ASSOCIATION CANADIENNE DES MANUFACTURIERS DE SPÉCIALITÉS CHIMIQUES

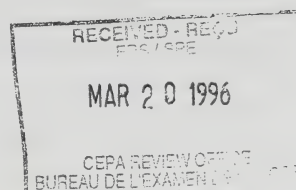
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March 19, 1996

The Honorable Sergio Marchi, P.C., M.P.
Minister of the Environment
28th Floor
10 Wellington Street
Hull, Quebec
K1A 0H3



Dear Minister:

Re: Government Response to the Recommendations of the Standing Committee on Environment and Sustainable Development

The Canadian Manufacturers of Chemical Specialties Association (CMCS) has reviewed the Response "*Environmental Protection Legislation Designed for the Future - A Renewed CEPA*." The Response has enhanced the effectiveness of the CEPA by addressing the inadequacies of the Steering Committee Report and incorporating themes such as the recognition of voluntary approaches.

CMCS has done a chapter-by-chapter analysis of the Government Response and offers the following comments on how to further strengthened CEPA:

Chapter 1 - Guiding Principles

- The government proposes to include a statement in the *Act*, describing how CEPA will contribute to the goal of sustainable development through pollution prevention.

The government definition of pollution prevention does not include the concepts of reuse and recycle. The goal of pollution prevention is to move from pollution control and waste treatment to pollution prevention. Reuse and recycle are certainly concepts that fit well with this goal.

- Government states a primary objective of a renewed CEPA is to contribute to the goal of sustainable development, a concept CMCS supports. However, government must recognize the interdependence of social, economic and environmental systems when defining sustainable development.
- Government is recommending the concept of "User/Producer Responsibility" be incorporated as a guiding principle in CEPA.

CMCS generally supports the incorporation of qualified concepts such as New Substance Notification Provisions (NSNP) into CEPA. The concept of “User/Producer Responsibility” is new; there is no national or international evidence to suggest this initiative should be incorporated into CEPA. CMCS recommends the concept be studied further and better defined.

Chapter 2 - Administration

- The response commits government to using economic instruments for environmental protection.

CMCS suggests government pursue this initiative carefully; the impact of using economic instruments such as environmental taxes and charges has not been thoroughly studied. Their impact on economic growth and the implications for trade and competitiveness must be considered along with the environmental concerns.

- Government generally recognizes the role of voluntary approaches, the Response tentatively commits to a discussion on voluntary approaches.

CMCS is committed to effective voluntary approaches such as Accelerated Reduction/Elimination of Toxics (ARET). Discussions on voluntary approaches must be based “how” they will be used, not “whether” they will be used.

- Government is recommending that General Agreements for Environmental Management and Equivalency and Administrative Agreements have a five-year sunset clause.

CMCS recommends government replace the “sunset” clause with a “review” clause - to create stable government/industry working relationship and limit the resources required by industry and government to administer these agreements. In addition, the recommended mandatory review of CEPA every seven years should be optional; it should be flexible enough to accommodate incremental amendments, avoiding general overhauls.

- Government intends to amend CEPA to allow for cost recovery where a service is being provided.

Existing legislation such as the *Financial Administrative Act* already provides for cost recovery programs. Any plan to implement Cost Recovery initiatives should only be done following discussions with stakeholders to develop performance indicators and reporting structures. CEPA should be concerned with issuing notifications, not permits.

Chapter 3 - Public Participation

- Government proposes to use a “public registry” to simplify information gathering for the public.

The *Ontario Environmental Bill of Rights* (OEBR) has a similar component. Government should review the OEBR and any other applications before incorporating it into the CEPA. As well, government must outline how the Public Registry will protect confidential information.

- The “Right to Sue” recommendation proposes to expand the current right (loss or damage) to any party who has violated CEPA and/or its regulations where significant harm was done to the environment.

The “Right to Sue” should not be incorporated into CEPA. There are alternative means of ensuring these rights are protected, the responsibility for prosecution should remain with government rather than transferring it to the public.

Chapter 4 - Ecosystems Science and National Norms

- This chapter recommends giving the Minister authority to require a submission of information for research and publication.

The authority includes an extensive, open-ended list of powers in addition to those outlined in the National Pollutant Release Inventory (NPRI). CMCS recommends the list specify what those powers are and ambiguous phrases like “such as” be eliminated.

- The Government is proposing to enshrine the NPRI in CEPA and use a multi stakeholder consultative process for changes to the NPRI and other national inventories.

CMCS recommends streamlining national programs like NPRI to provide one-stop shopping for multi-level government inventory requirements, minimizing industry reporting requirements.

- The “Requests for Confidentiality” recommendation needs clarification. Does government require up-front substantiation when a claim is made, or when a claim has been challenged?

CMCS does not recommend up-front substantiation, the *Access to Information Act* and current Environment Canada policy only require information to substantiate confidentiality claims when claims have been challenged. This practice should be incorporated into CEPA.

Chapter 5 - Enforcement

- No comments.

Chapter 6 - Pollution Prevention

- Government proposes to amend CEPA to enable Ministers to prepare and implement pollution prevention plans for toxic substances.

CMCS recommends that Ministerial intervention must be based on preset criteria and limited to areas of significant government responsibility. Pollution Prevention Plans must be flexible and non-prescriptive; governments must be consistent in their requirements and present a harmonized approach.

- The Response proposes to implement a tracking system to report on industry's pollution prevention activities.

Industry disagrees with a tracking system if it contributes to further bureaucratic "red tape," causing additional regulatory requirements for industry and enforcement burdens on government. Any proposal to use the NPRI to track activities should only be considered following stakeholder consultations to determine scope and class of information.

Chapter 7 - Biotechnology

- The Department of Environment has expressed an interest in harmonizing all aspects of biotechnology under their jurisdiction. Products of biotechnology regulated under other legislation should not be regulated under CEPA. Industry would not support legislative duplication which leads to increased regulation or additional cost recovery requirements.
- A set of biotechnology regulations that promotes innovation, encourages investment, and are competitive internationally must be a priority. The process of developing a set of regulation for biotechnology has been slow, however, progress is being made and these efforts must continue.
- The Response proposes to create a separate part of the *Act* to deal with live or animate products of biotechnology.

Enzymes are chemicals and all chemicals, regardless of how they are produced, should be treated the same under CEPA.

Chapter 8 - Controlling Pollution and Waste

- Throughout its response, the government's tone has been to improve on the recommendations made by the Standing Committee; however, this chapter is an exception. Government has diverged from existing policies and entered into areas of overlap and duplication.

- The proposed new requirement to Reduce /Phase-out the Quantity of Hazardous Waste being Exported for Disposal recommends Canada become self-sufficient in waste disposal.

Self-sufficiency is contrary to existing disposal agreements between Canada and the United States. Also it is counter to the Rio convention which advocates sharing environmentally sound facilities on a regional basis. This reduce/phase-out recommendation does not encourage using the best facilities and calls for greater government intervention and increased costs.

- Government also recommend they assume control for the import and export into Canada of non-hazardous waste.

Canada is not bound by international obligation to control this, there is no reason the Federal Government should take on this role.

- Government recommends the Interprovincial/Territorial Movements of Hazardous Waste be moved from the Transportation of Dangerous Goods Agreement (TDGA) to CEPA.

Substantial movement has been made under the existing approach; this process can work without the Federal Government taking on these additional powers.

- The response is proposing to legislate product stewardship in reference to "Responsibilities of Users and Producers."

This should not be a consideration. Stewardship programs should be a self-sustaining business practice not a regulatory requirement, legislating this would lead to government intervention in the workings of the marketplace.

- The response proposes to undertake in the next 12 months, a comprehensive study of nutrients that enter the environment through human activity.

CMCS supports this undertaking and look forward to discussing the results of the study before government initiates any policy or regulatory action.

Chapter 9 - Controlling Toxic Substances

- When deciding which substances are toxic under CEPA, the response empowers the Minister to require additional testing, where necessary, to conduct Priority Substance List (PSL) assessments.

This authority, if given, should be accompanied by a set of assessment requirements including the use of data from other jurisdictions, a review of costs and competitiveness implications, and exposure data before initiating a study. In addition, stakeholders should share the burden of extra assessments.

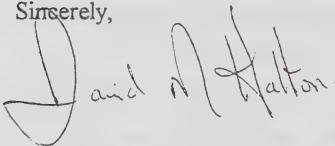
Chapter 10 - Government Operations

- No Comments

In closing, CMCS is pleased to have played a role in shaping CEPA. The key to a successful CEPA is a balance between environmental protection and a flexible framework that allows for increased investment and job creation. The CEPA review process has made significant progress in this area and it is important that we continue to build on these achievements.

Thank you for the opportunity to comment.

Sincerely,



David M. Halton, Ph.D.
President

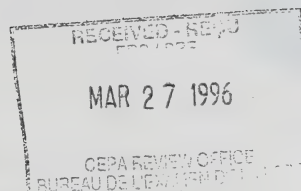
- cc. Terri Goulding, Home Hardware Stores Limited
Henry Lavoie, Parall Ltee
Anna M. Olasz, Rickitt & Colman Canada
George Newbery, Rochester Midland Limited
Alan MacDonald, Lever Industrial Inc.
Anne McConnell, Proctor & Gamble
Ruth Wherry, CEPA Office, Environment Canada



Canadian Electricity Association
Association canadienne de l'électricité

March 27, 1996

The Honourable Sergio Marchi P.C., M.P.
Minister of the Environment
House of Commons
Ottawa, ON
K1A 0A6



Dear Minister:

Further to my letter to you dated March 20, 1996, the Canadian Electricity Association (CEA) wishes to provide further comment on the document entitled *Environmental Protection Legislation Designed for the Future-A Renewed CEPA*. Our representations cover the salient points in the government's response document from the perspective of the electric utility industry. Our detailed comments are attached as Appendix "A".

Founded in 1891, CEA represents Canada's electric utilities who together have \$143 billion in assets and whose 91,000 employees ensure electricity service to Canadians coast to coast. Our members have day-to-day experience with the various aspects of the federal, provincial and territorial laws and regulations respecting the environment. As part of their activities, electric utilities must deal with air-quality and land-use issues, environmental impact assessments, the storage of hazardous waste, and the use and disposal of toxic substances.

On the basis of our experience with *CEPA*, we advocate certain changes to the Act designed to enhance environmental protection while providing greater clarity and simplicity in its administration. Our representations focus on Chapter Nine of the government's response, and a comprehensive brief on risk assessment and controlling toxic substances is attached as Appendix "B". We would urge you to give our recommendations on risk assessment principles positive consideration. We see them as being fundamental to a workable toxic substance management process.

Yours Sincerely

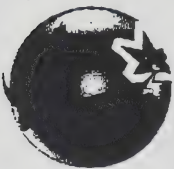
CANADIAN ELECTRICITY ASSOCIATION

D. Patrick McNeil

Vice President Public Affairs and Environment

Attachments (2)

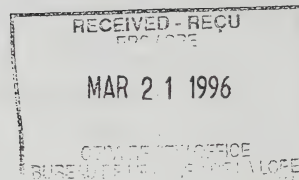
cc. Ruth Wherry Manager CEPA Office



Canadian Electricity Association
Association canadienne de l'électricité

March 20, 1996

The Honourable Sergio Marchi P.C., M.P.
Minister of the Environment
House of Commons
Ottawa, ON
K1A 0A6



Dear Minister:

On behalf of the Canadian Electricity Association (CEA), I wish to advise you that further representations on the document entitled *Environmental Protection Legislation Designed for the Future-A Renewed CEPA* will be forthcoming from CEA within the next two weeks. We are unable to provide a full range of comments by the March 22, 1996 because we are still reviewing the experience gained from our participation in a Strategic Options Process (SOP) currently underway under *CEPA* on the toxic emissions of the electric power sector. The SOP has not yet run its course and we need a bit more time to collect and present the views of industry participants in a manner that would be useful to the government's examination of *CEPA*.

I can tell you, however, that CEA is gaining new insight on the workability of the federal government's recently approved *Toxic Substance Management Policy* which is to be enshrined in the legislation. CEA supports the government's position that an assessment of risk must underlie the determination of which substances are toxic. We strongly support the decision to retain the concepts of entry, exposure and effects. CEA is concerned, however, that the implementation of current *CEPA* provisions and the *Toxic Substance Management Policy* is not following generally accepted principles of risk assessment and management.

I trust this delay in receiving our representations will not be the cause of concern.

Yours Sincerely
CANADIAN ELECTRICITY ASSOCIATION

D. Patrick McNeil
Vice President Public Affairs and Environment

cc. Ruth Wherry Manager CEPA Office

APPENDIX "A"

CEPA Review Detailed Comments by the Canadian Electricity Association (CEA)

GUIDING PRINCIPLES (CEPA Chapter 1)

In its brief presented on December 8, 1994 to the Standing Committee on the Environment and Sustainable Development of the House of Commons, CEA suggested that the *Canadian Environmental Protection Act (CEPA)* remain focused on controlling toxic substances, and provide a framework for setting priorities and addressing pollutants and wastes more effectively. Canada needs a clear and comprehensive approach to identifying, assessing and controlling toxic substances that is based on science and on risk assessment and management. More detailed comment is provided in the document attached as Appendix "B" and entitled *Recommendations on Risk Assessment Principles for Inclusion in the CEPA*.

In addition, our brief to the Standing Committee in December 1994 indicated that such new concepts as sustainable development, biodiversity and ecosystem management must remain practical, flexible and evolving as concepts. They must not be turned into rigid legal issues defined by the courts. Hence, we do not believe it is useful to mention them in the operative portions of *CEPA*, but they may be placed in the preamble.

ADMINISTRATION (CEPA Chapter 2)

The government has made a commitment to work closely with provinces to minimize duplication. Cooperation between the federal and provincial governments is essential to avoid government overlap and duplication. To date, the preferred method to deal with overlap and duplication appears to be "harmonization". We believe *CEPA* should define harmonization as an approach whereby the federal government sets national priorities based on good science and consultations, and avoids introducing programs or activities that duplicate or overlap with provincial actions. Issues of local concern should be left entirely to the provinces. Where appropriate to achieve this goal, we support a more effective utilization of equivalency agreements. In the same vein, *CEPA* should ensure that when the federal government negotiates an international treaty requiring provincial action, it enables the provinces to advise on the treaty's possible impacts within their jurisdictions and to take part in its implementation.

THE RIGHT TO INFORMATION (*CEPA* Chapter 3)

Whistle-blower Protection - The proposed changes to the Act are only expanding a right that already exists. Currently, individuals are protected if they should report a release of a toxic substance. The proposed change would expand this protection so that protection is available for reporting any contravention under the Act. The proposed change appears to add the language “in good faith” which is not part of the current Act. We agree with this language because it safeguards this type of protection from abuse by individuals.

Right to Sue - The proposed recommendation in this section is confusing. It is unclear whether some special statutory right to damages is being proposed or some more general right to sue for environmental protection is being promoted akin to Ontario’s Environmental Bill of Rights (EBR) action for damages to the environment. As the Report states, common law remedies still exist, plus *CEPA* already provides or injunctive relief to be sought by the public in certain instances. Additionally, there is no demonstrable need for a new cause of action. If, on the other hand, an EBR type of action is being contemplated, we suggest the EBR model be followed as this was the outcome of extensive tripartite negotiations involving the balancing of governmental, environmental and industry interests.

ENFORCEMENT (*CEPA* Chapter 5)

In a renewed *CEPA*, it is proposed that more flexibility be provided in the use of enforcement tools to secure compliance. However, the government proposes to expand federal officers’ enforcement powers. This appears to be inconsistent with the concept of “harmonization” and inter-governmental approaches, unless it is made clear that the exercise of these powers will be performed by provincial authorities on behalf of the federal government through an equivalency agreement. CEA suggests that the federal government should move away from an enforcing role and leave this up to the provinces where this is practicable. The role of the federal government should be to provide clarity and consistency to environmental protection and management regimes and to provide national standards based on sound scientific information.

Implementation of national standards should take place at the provincial level. The main role of Environment Canada should be to negotiate and then harmonize regulatory requirements across the country but leave the task of administration and enforcement of the programs to provincial authorities. Environment Canada’s role could be to audit the performance of the provinces on regulating and administering *CEPA* requirements rather than duplicating resources to enforce compliance of stakeholders with specific regulations.

POLLUTION PREVENTION PLANNING (*CEPA* Chapter 6)

This Chapter proposes to shift the focus of environmental protection activities towards minimizing or avoiding the creation of pollutants and wastes. CEA supports pollution prevention but sees the proposed approach as very intrusive and at odds with the principle of focusing on results. The proposed pollution prevention plan requirements should be consistent with the ARET initiative and NPRI reporting requirements. Reasonable thresholds must be set to determine who needs to prepare and implement plans.

In terms of the definition of pollution prevention and the interpretation that this definition excludes off site reuse and recycling, CEA believes that this may send unfortunate signals to industry. In the case of the electric utility industry, for example, current practice of reusing solid wastes from thermal generating facilities, including fly ash and scrubber sludge, for the cement industry and to replace natural gypsum in dry wall respectively, would have to be curtailed. The fly ash and the scrubber sludge would be defined as waste and would require on-site disposal. Moreover, one of the longer term issues for electric utilities is what technology to go to when we turn over our capital stock at the end of the normal service life of thermal generating facilities. This will be a particularly important decision in the context of climate change options. A narrow definition of pollution prevention may suggest to utilities that certain options may be less attractive because of the byproduct waste created could not moved off site for reuse or recycling. This message to industry may not be the intent of the provision, but could be its result.

CONTROLLING POLLUTION AND WASTE (*CEPA* Chapter 8)

In terms of international air pollution, the proposal put forward by the government's response document is for the use of a wider range of tools, such as economic instruments, pollution prevention planning and federal/provincial/territorial agreements on emission reduction targets, and the establishment of a framework for governments to work together to address international air issues. The proposed revisions in section 8.1 which will enable use of broader air management tools are considered still too restrictive. For example, greenhouse gas emissions are ideally suited to economic instruments, such as emissions reductions trading schemes. Yet, only SO_x and NO_x are being considered for emission trading.

Reduction of Hazardous Wastes and Non-hazardous Wastes- CEA supports the development of a "Canadian" definition for wastes and suggest that a definition for "hazardous waste" is needed. This definition is essential given that *CEPA* intends to regulate certain aspects of hazardous waste management, for example inter-provincial shipments. A definition of hazardous waste should establish a level playing field across provinces. At present, hazardous wastes are defined at the provincial level and this results in some materials being considered industrial waste in one province and hazardous waste in another.

TOXIC REDUCTION (*CEPA* Chapter 9)

CEA supports the government's position that an assessment of risk must underlie the determination of which substances are toxic. We strongly support the decision to retain the concepts of entry, exposure and effects. CEA is concerned, however, that the implementation of current *CEPA* provisions and the *Toxic Substance Management Policy* is not following generally accepted principles of risk assessment and management. Along with many others in government and industry, we had assumed that risk assessment and risk management were universally understood and sufficiently deployed in *CEPA* and in the *Toxic Substance Management Policy* as to be effectively applied. The validity of this assumption is being ever-increasingly questioned as experience is gained through many of the Strategic Options Processes (SOP) currently underway. Fortunately, there is still time to remedy the situation and build into *CEPA* the necessary and fundamental safeguards to proper risk assessment and risk management.

The experience gained from electric utilities participating in the SOP on their sector emissions has provided new insight on the risk assessment principles that should be included in a renewed *CEPA* in order for the *Toxic Substance Management Policy* to be enshrined in the legislation in a workable fashion. The document attached as Appendix "B" was produced on a cooperative basis by the Canadian Steel Producers Association and CEA. It was undertaken from the perspective of the conduct of human and environmental risk assessment. It makes a series of recommendations to ensure that *CEPA* remains a solid risk management framework.



CANADIAN ENERGY PIPELINE ASSOCIATION
ASSOCIATION CANADIENNE DES PIPELINES DE RESSOURCES ÉNERGETIQUES

March 18, 1996

The Honourable Sergio Marchi
Minister of the Environment
10 Wellington Street 23rd Floor
Les Terrasses de la Chaudière
Hull, Quebec
K1A 0H3

VIA COURIER

Dear Minister:

Re: Environmental Protection Legislation Designed for the Future - A Renewed CEPA

The Canadian Energy Pipeline Association (the "Association") represents the interests of the 11 major crude oil and natural gas transmission pipelines that transport over 95% of the natural gas and oil produced in Canada. Our members own and operate facilities in six provinces and one territory and are regulated by the National Energy Board or provincial regulatory agencies.

The mandate of the Association is to provide effective representation on behalf of the transmission pipeline companies, to governments, regulators and the public. We establish the pipeline industry as a key stakeholder in the Canadian economy and as a leader in environmental stewardship and operational excellence.

Association members contribute significantly to the Canadian economy. We directly employ over 9000 people and pay property taxes in excess of \$235 million per year. In 1995, the value of crude oil and natural gas transported by Association members to export and domestic markets exceeded \$28 billion. I have attached a copy of the Association's 1994 Annual Review, in which you will find a list of our members and a description of Association activities.

Environmental stewardship is a top priority to the Association and its members. We were one of the first industry associations to endorse Canada's greenhouse gas stabilization program, the Voluntary Climate Change Challenge Program. Every member company has enrolled in the Voluntary Challenge Registry, and over 90 percent of our members' greenhouse gas emissions are represented by Action Plans. The Association has also agreed to help fund the Registry which will detail emission levels, action plans and future emission targets.

Although our Association has actively participated in the review of CEPA by the Standing Committee on Environment and Sustainable Development and the federal government, our concerns have not been heard. As Parliament will be reviewing the legislation during this next session, we bring these concerns to your attention and request that they be given due consideration by the government.

- 2 -

We have reviewed "CEPA Review: The Government Response" and have some comments that will focus on issues that directly affect our members and on which we believe will contribute to a meaningful and informed discussion.

Economic Instruments

Part One. Overview (CEPA Review: The Government Response, p.5)

"The reviewed Act would also provide a role for voluntary approaches, and for the use of economic instruments. Utilizing all the tools to achieve sustainable development and environmental protection goals is necessary for success."

Chapter 2. Administration

Economic Instruments (CEPA Review: The Government Response, p.19)

"In Canada, as in most other industrialized countries, the method of dealing with environmental problems has focused almost entirely on setting out control requirements in regulations. Limits placed on releases of polluting substances to the environment are an example of this type of regulation. Economic instruments are tools created by regulation that influence behaviour in a different way. These instruments directly or indirectly lead to changes in market prices and are designed to encourage more environmentally desirable responses from producers and consumers. They could be used by the federal government to prevent and control toxic substances or to help solve global, national or regional problems that require a coordinated national approach."

Creating Opportunity notes that "approaches that foster innovation must be used to achieve environmental objectives." It is essential to consider a broad range of options, including economic instruments, when determining how best to manage environmental problems and prevent pollution. In Creating Opportunity, the Liberal Plan for Canada, there is a commitment to "use economic instruments for environmental protection, as a complement to the traditional regulatory method, where these can offer the lowest-cost and most flexible methods of achieving environmental goals."

Non-regulatory Approaches to Environmental Protection (CEPA Review: The Government Response, p.20)

"There are a range of voluntary approaches which can be used to address environmental concerns. These include letters of commitment, guidelines and principles, codes of practice, standards, agreements, memoranda of understanding, contracts and so forth. Within each of these vehicles are varying approaches to the treatment of partnerships, financial issues, accountability, government involvement, reporting and stakeholder participation."

- 3 -

"Non-regulatory initiatives currently in place will help government assess which sectors respond to this approach and which substances can be managed this way. More importantly, the results of these initiatives can help to focus the government's regulatory regime. Used effectively, non-regulatory action can be used to determine if, when and to what degree regulations are required."

The Association comments: the federal government should promote voluntary approaches as the preferred method to address air quality management for greenhouse gas emissions. The Voluntary Climate Change Challenge Program is an example of a voluntary approach that is only beginning to show successes. Organizations that are enrolled in the Program have implemented measures to reduce emissions. As an example, TransCanada Pipelines Limited achieved a 33 percent reduction in methane emissions per unit of throughput from 1990 to 1994, and anticipates further reductions in the future. It is critical that industry be allowed time to develop low cost options, explore potential innovative new technologies and implement equipment replacement programs before regulation or economic instruments are considered.

Before regulation is applied, it is important for the government to assess Canada's national circumstances in relation to those of its major trading partners. Canada's strong economic growth, trade, competitiveness and employment may be constrained through the inappropriate use of economic instruments. The voluntary approach will accommodate Canada's international competitiveness, while allowing the industry to continue to lead in environmental management.

Equivalency and Administrative Agreements

Chapter 2. Administration (CEPA Review: The Government Response, p.17)

"CEPA currently allows the Government of Canada to sign agreements with provinces and territories so that it can achieve more efficient and effective administration of CEPA. There are two types of agreements provided for: administrative agreements and equivalency agreements. Administrative agreements are work-sharing arrangements with provincial and territorial governments that can cover activities such as inspections, investigation, gathering of monitoring information and reporting of collected data. They do not release any of the parties from their respective responsibilities under the law, nor do they delegate legislative power from one government to another."

The Association welcomes intentions to negotiate harmonization of related federal laws and federal and provincial laws. Improved harmonization will eliminate the duplication and conflicts between federal and provincial regulatory requirements, reducing project approval times and costs to industry.

We support streamlining and harmonization of regulation to keep costs of regulation as low as possible. Regulations that are in place must be essential and costs reasonable.

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Pollution Prevention

Chapter 6. Pollution Prevention (CEPA Review: The Government Response, p.48)

"Prevention, Preparedness, Response and Recovery Framework (P2R2)

- 6.12 The Government of Canada proposes to amend CEPA to include new provisions to enable the Minister to establish a legislative framework, including regulatory and non-regulatory approaches, for:
- dealing with the environmental aspects of emergencies, and
 - addressing the elements of prevention, preparedness, response and recovery"

The Association comments: pipeline companies are already regulated in the areas of prevention, preparedness, response and recovery by the National Energy Board or provincial agencies. To avoid costly duplication, the amendment of CEPA enabling the Minister to establish legislative frameworks should be restricted to areas not covered by existing guidelines, standards, codes of practice or regulations under any act, in order to prevent needless duplication and jurisdictional overlap.

Standards, Guidelines and Codes of Practice (CEPA Review: The Government Response, p.48)

- "6.13 In recognition of the value of standard setting in developing procedures and conduct to be observed when dealing with environmental aspects of emergencies, we propose to ensure that a renewed CEPA includes the authority of the Minister to develop and/or adopt by reference appropriate standards, guidelines and codes of practice for the environmental aspects of emergencies.
- 6.14 We propose to continue to work with MIACC and other organizations in the development of standards, guidelines and codes of practice and to consult on incorporation of any such standards, guidelines and codes of practice into CEPA."

The Association comments: pipelines are effectively regulated in the area of environmental emergencies by the National Energy Board or provincial agencies. CSA Standard CAN/CSA-Z731 *Emergency Planning for Industry* provides specific direction for the development of emergency plans and response. We would support enabling legislation under which this and similar standards can be adopted, again avoiding costly duplication.

The "Federal House" (CEPA Review: The Government Response, p.49)

"Federal facilities, including those of Crown Corporations and facilities on federal lands may use hazardous substances which could be released to the environment through spills, leaks and other such incidents. The Standing Committee recommended that federal facilities be subject to the same requirements for site registration and spill-reporting as well as for prevention, preparedness, response and recovery as would be

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required of comparable facilities regulated by provinces and territories.

The definition of Federal House as written by government officials is not clear. The Association seeks clarification as to whether pipelines regulated by the National Energy Board would be included in the Federal House.

Reporting of Spills, Leaks and Other Such Incidents (CEPA Review: The Government Response, p.49)

"The Standing Committee recognized the benefits of a Canada-wide network for the reporting of spills, leaks and other like incidents that is harmonized with and complementary to existing emergency alerting and reporting systems. In fact, through the Canadian Council of Ministers of the Environment, discussions have already begun with our provincial and territorial counterparts regarding such a network."

The Association encourages Environment Canada to continue discussions with other federal departments and provincial governments for the development of a harmonized, national spill-reporting network.

The Association supports a one-call approach to a lead agency, which would coordinate communication with other stakeholder groups.

International Air Pollution

Chapter 8. Controlling Pollution and Waste (CEPA Review: The Government Response, p.54-55)

"... The Committee was, nevertheless, of the opinion that Part V should be utilized to play a more important role in the management of international air pollution." It pointed particularly to the example of Canada's 1992 commitment under the international Framework Convention on Climate Change to stabilize greenhouse gas emissions to 1990 levels by the year 2000."

"Part V of CEPA currently contains general provisions to enable the implementation of Canada's international air pollution obligations. Prior to recommending a regulation to the Governor in Council, the Minister of the Environment must be satisfied that, for pollution sources other than federal works or undertakings, the province, provinces or territory where the pollution source is located are either not able or not willing to make the required regulations."

8.1 The Government of Canada proposes to put to better use the current provisions of Part V by including: . . .

- the use of tools including economic instruments, in particular emission trading schemes for regional air shed management for SO_x and/or NO_x, regulations, pollution prevention planning and negotiated federal-provincial, federal-territorial agreements on emission targets, with

- 6 -

provision for similar agreements with aboriginal governments; comprehensive management, jointly by federal, provincial and territorial governments with participation by Aboriginal Peoples as appropriate, of combinations of air pollutants such as sulphur dioxide, particulates, nitrous oxides, volatile organic compounds, other hazardous air pollutants and greenhouse gases including carbon dioxide, within regions of Canada, when those emissions are identified as significant contributors to transboundary or global air pollution."

The Association comments: as previously mentioned, the Association supports the use of a voluntary approach to address greenhouse gas emissions.

The Association is supportive of the use of emission trading programs, particularly in the area of greenhouse gas emissions. In addition to SO₂ and NO_x, it is recommended that CO₂ and other greenhouse gases be included in the trading program. As greenhouse gas emissions are a global concern, the use of emissions trading rather than imposition of costs would be an appropriate way to deal with disparities. As the United States, Canada's major trading partner, is establishing emission trading programs in some jurisdictions, we support implementation of an emission trading program on a continental and international level.

Environmental Protection and Aboriginal Lands

Chapter 10. Government Operations, Federal Lands and Aboriginal Lands (CEPA Review: The Government Response, p.79)

"In its CEPA Review Report, the Standing Committee indicated that "there is no regulatory framework to provide most Aboriginal Peoples with the basic levels of environmental protection that other Canadians enjoy and take for granted." In order to address this deficiency, the Government of Canada proposes that the new "Government Operations, Federal Lands and Aboriginal Lands" Part of a renewed CEPA continue to apply to reserve lands and any other aboriginal lands where title rests with the federal government, until such time that Aboriginal Peoples assume control over environmental matters under self government of other agreements incorporating self-government provisions. In this way, Aboriginal Peoples can benefit from the same level of environmental protection as is enjoyed by other Canadians."

The Association comments: several of the Association members own and operate facilities on First Nations Lands. Amendments to CEPA should ensure that inclusion of Aboriginal Peoples on the National Advisory Committee be consistent with the evolution of the right of aboriginal self-government. Until Aboriginal self-government has been fully defined, we believe a revised CEPA should provide mechanisms for enforcement on First Nations Lands.

- 7 -

The Canadian Energy Pipeline Association looks forward to participating in the upcoming review process and welcomes the support and acknowledgement of your office and Environment Canada in addressing the points raised in this letter.

Yours truly,



Myron Kanik
President

/lm

cc: Honourable Anne McLellan, Minister, Natural Resources Canada
Honourable Paul Martin, Minister, Finance Canada
Honourable John Manley, Minister, Industry Canada
Honourable Arthur Eggleton, Minister, International Trade
Honourable David Anderson, Minister, Transport Canada
Honourable David Dingwall, Minister, Health Canada
Honourable Stéphane Dion, President of the Queen's Privy Council and
Minister, Intergovernmental Affairs
Marjory Loveys, Policy Advisor, Prime Minister's Office

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March 22, 1996

The Honourable Sergio Marchi
Minister of the Environment
Terrasses de la Chaudière
10 Wellington St.
Ottawa ON K1A 0H3

Dear Minister,

Re: CEDF Submission Regarding CEPA Review

The Canadian Environmental Defence Fund (CEDF) is a national, charitable environmental organization that provides funding and legal, scientific, planning and engineering expertise to grass-roots citizens groups pursuing nationally significant environmental law cases.

Our mission is to ensure that citizens are provided adequate access to decision-making and the courts in the defence of the environment.

Following this mission, the CEDF shares the federal government's interest in improving the *Canadian Environmental Protection Act* (CEPA). We believe that the government's response to the Parliamentary Standing Committee on Environment and Sustainable Development's report, *It's About Our Health*, contained many recommendations that would improve protection of the public.

It is our view that the Canadian public desires a strong federal presence in setting and enforcing national standards for areas under federal jurisdiction, in areas requiring inter-jurisdictional cooperation, and for issues of national concern, such as toxic substances. CEPA should provide a key legislative base for promoting pollution prevention in Canada. A partnership for reaching these goals should be established with the public by creating a federal Environmental Bill of Rights which contains a declaration of public trust over federal lands and natural resources, and the right to information and to review decisions. An electronic public registry, similar to the one in Ontario, should be established to provide information on all proposed and final decisions under CEPA (e.g. waivers, approvals, guidelines, regulations, agreements etc.). A sixty day notice and comment period should also be provided with the right of review available in certain cases.

.../2

*CEDF: CEPA response
page 2*

An Environmental Fund, possibly supported by moneys collected from fines, fees, and other charges imposed under CEPA, should be created. A Participant Funding Program, financed from the Environment Fund, should be established to ease the burden upon the public for accessing and enforcing CEPA provisions.

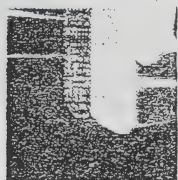
These improvements to the government response will afford greater public participation in the protection of the environment.

Thank you for your kind consideration of this submission.

Yours truly,

A handwritten signature in black ink, appearing to read 'D. Donnelly', with a large, stylized flourish extending from the end of the signature.

David R. Donnelly
Executive Director



Canadian Environmental Law Association
L'Association canadienne du droit de l'environnement

517 College Street, Suite 401, Toronto, Ontario M6G 4A2
Telephone (416) 960-2284
Fax (416) 960-2392

21 March 1996

The Honourable Sergio Marchi,
Minister of the Environment,
Terrasses de la Chaudière,
10 Wellington St., Hull, PQ,
K1A 0H3

Dear Minister Marchi,

As you are aware the Canadian Environmental Law Association has been actively involved in the process to review and improve the Canadian Environmental Protection Act. You have received our views on the government's response to the Standing Committee's proposals under separate cover. This letter is to emphasise our specific concern with regards to the government's proposals for the regulation of biotechnology contained in the December 1995 response (Environmental Protection Legislation Designed for the Future) to the June 1995 report of the House of Commons Standing Committee on Environment and Sustainable Development (It's About Our Health!).

We are deeply concerned that the government's proposal would significantly weaken the provisions of the existing Act as they apply to biotechnology. The minimum standards for notification and assessment of toxicity for all products of biotechnology currently provided for by CEPA would be eliminated.

This proposal is inconsistent with the intent of the Standing Committee's recommendations regarding the regulation of biotechnology under CEPA, and could endanger the health, safety and environment of Canadians. It must be rejected.

Rather, consistent with the intent of the Standing Committee's recommendations, a new biotechnology part should be established under the CEPA. The new CEPA biotechnology part should:

- * Apply to all products of biotechnology which may enter the environment, including those which the government currently proposes to regulate under other Acts, such as the Seeds Act, the Pest Control Products Act, and the Fertilizers Act;

- * Establish requirements for the assessment of biotechnology products in terms of their:

- potential immediate or long-term, direct or indirect

- 2 -

effects on human life and health, the environment, and biodiversity, including cumulative impacts;
+ potential effectiveness of the products for their intended purposes; and
+ the availability of alternative means of achieving products purposes which may present lower potential for harm to the environment and human health;

* Provide for public participation in decision-making regarding biotechnology including:


- + public notice of major decisions regarding biotechnology products;
- + public notice of proposed field tests of biotechnology products;
- + opportunities to appeal government decisions regarding biotechnology products, including the approval of field tests; and
- + enhanced access to information regarding products of biotechnology;

* Establish a full-cost recovery, user-pay system for approvals of biotechnology products; and

* Provide for the establishment of a database of environmental releases of products of biotechnology in Canada.

We look forward to seeing the positive changes which will improve the environmental protection that we all need.

Yours sincerely,


for Michelle Swenarchuk
Director



Canadian Environmental Law Association
L'Association canadienne du droit de l'environnement

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IT'S STILL ABOUT OUR HEALTH!

A Submission on

***CEPA Review: The Government Response
Environmental Protection Legislation Designed for the
Future - A Renewed CEPA - A Proposal***

by

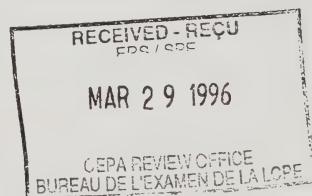
The Canadian Environmental Law Association

CELA Brief No. 283

and

The Canadian Institute for Environmental Law and Policy

CIELAP Brief 96/3



March 1996

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Acknowledgements

This brief was drafted and edited by Paul Muldoon, Counsel with the Canadian Environment Law Association and Mark Winfield, Director of Research with the Canadian Institute for Environmental Law and Policy. Ramani Nadarajah, Counsel with CELA, contributed to the drafting of the submission. Other organizations have significantly contributed to its contents. In particular, various member groups of the Toxics Caucus of the Canadian Environmental Network provide comments and insight on various chapters of this submission.

John Jackson with Great Lakes United assisted in drafting portions of Chapter 4 on the National Pollutant Release Inventory and Chapter 8 on the Reduction of Hazardous and Non-Hazardous Waste recommendations. Chris Rolfe with West Coast Environmental Law Association assisted in the drafting of the ocean dumping recommendations in Chapter 8.

Karen L. Clark and Fé de Leon assisted in the editing and production of the submission.

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APPENDICES

Appendices

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- Appendix B - The Canadian Environmental Protection Act: An Agenda for Reform - A Submission to the Standing Committee on Environment and Sustainable Development on behalf of listed groups, November, 1994.
- Appendix C - Canadian Institute for Environmental Law and Policy and the Canadian Environmental Law Association, A Response to the Proposed Toxic Substances Management Policy for Canada, Submitted to Environment Canada, November, 1994.
- Appendix D - At the Environmental Crossroads: The CEPA Review and the Future of Canada's Environment, October, 1995.
- Appendix E - "Environmental Protection Act - Take action against toxins - Are Mr. Chrétien and Ms. Copps willing to roll dice with the health of Canadians?" The Spectator, Friday November 24, 1995, p. A11.
- Appendix F - "CEPA Government Response Score Card," December 15, 1995.
- Appendix G - Canadian Institute for Environmental Law and Policy, Reforming the Canadian Environmental Protection Act - A Submission to the Standing Committee on Environment and Sustainable Development, September, 1994.
- Appendix H - A Response to Pollution Prevention: Towards a Federal Strategy for Action Consultation Document, Submitted to Environment Canada, May 3, 1995.
- Appendix I - National Pollutant Release Inventory Citizens' Caucus, Recommendations in Brief to the Minister of the Environment on the National Pollutants Release Inventory, January, 1993.

INTRODUCTION

There are many environmental challenges facing Canada. The opportunity to address some of these concerns is through the review of the Canadian Environmental Protection Act (CEPA). At this time, there is a strong public mandate for new and stringent regulation to protect the environment. Recent polls reveal that over 75% of Canadians want strong environmental regulations, despite the weak economy. From this we can conclude that Canadians implicitly understand the connection between a healthy environment and a strong economy.

This submission is a response to a government proposal released in December of 1995 to reform CEPA. It attempts to both respond to the proposal and then propose some alternatives where appropriate.

The submission is being submitted by the Canadian Environmental Law Association (CELA) and the Canadian Institute for Environmental Law and Policy (CIELAP). CELA is a legal aid clinic in the province of Ontario that has been active in the reform of federal legislation. During the 1980s, it actively participated in the consultations reform of the Environmental Contaminants Act and the consultations pertaining to the existing CEPA.

CIELAP is an independent, non-profit environmental law and policy research and education organization that has undertaken numerous studies of federal environmental law and policy over the past twenty-five years. In 1994, CIELAP prepared five in-depth background papers on the reform of CEPA, which were presented to the House of Commons Standing Committee.¹

This submission is organized in the same manner as the government response to the recommendations of the Standing Committee on Environment and Sustainable Development. An attempt has been made to respond to each of the government's proposals. Additional recommendations have been made where the proposals put forth by the federal government are incomplete.

A detailed response is given to the governmental proposal on CEPA. We also consider it useful in some sections of our submission to review the background and history that evolved prior to the tabling of the government response in December of 1995. Some commentary on the role of the federal government with respect to environmental protection is also made.

¹ M. Winfield, ed., Reforming the Canadian Environmental Protection Act: A Submission to the House of Commons Standing Committee on Environment and Sustainable Development (Toronto: Canadian Institute for Environmental Law and Policy, September 1994).

0.1 Background to Submission

Under section 139 of CEPA, a Parliamentary Review was required within five years of its 1988 proclamation date. The formal review commenced in May of 1994 when the House of Commons Standing Committee on Environment and Sustainable Development was given the responsibility to review the Act. The Committee commenced its hearings in September of 1994 and subsequently conducted hearings across Canada. Members of the Toxics Caucus of the Canadian Environment Network made extensive presentations before the committee on a variety of matters.

The Caucus prepared two documents for the Committee. First, it prepared an in-depth series of research papers combined in a document entitled: Reforming the Canadian Environmental Protection Act - A Submission to the Standing Committee on Environment and Sustainable Development. The research papers were drafted by various groups from across Canada, including the Canadian Institute for Environmental Law and Policy, West Coast Environmental Law Association, Pollution Probe, and the Canadian Environmental Law Association. This document is appended as Appendix A to this submission.

In addition to this general document, a summary of the research papers was prepared in a document entitled: The Canadian Environmental Protection Act: An Agenda for Reform. This document was endorsed by more than 50 groups, including health care, environmental, labour, community and women's groups. This document was formally presented to the Standing Committee on November 29, 1994. It is included as Appendix B to this submission.

The Standing Committee completed its work in the Spring of 1995. Some two weeks before the anticipated release of the Standing Committee's report, Environment Canada released a new policy pertaining to toxic substances, the Toxic Substances Management Policy (TSMP).² The TSMP was released for consultation in mid-1994, during the time of the CEPA review. After a consultation meeting, various environmental groups made detailed submissions on the draft TSMP.³ The groups were highly critical of the policy. They argued that the TSMP moved in the wrong direction in how it proposed to address the problem of persistent toxic chemicals, especially in terms of how it defined "virtual elimination;" "environment;" "predominantly anthropogenic;" "persistence" and "bioaccumulation." The environmental groups' response to the TSMP is included as Appendix C to this submission. As salient as is the content of the new policy, its timing also indicates an intention to move backward on toxics. Released just prior to the tabling of the Standing Committee's report, the

² Government of Canada, Environment Canada, Toxic Substances Management Policy June, 1995.

³ Canadian Institute for Environmental Law and Policy and the Canadian Environmental Law Association, A Response to the Proposed Toxic Substances Management Policy for Canada, Submitted to Environment Canada (November 1994).

proposed policy appears to have been "tailor-made" to challenge the Committee's recommendations.

On June 15, 1995, the Standing Committee tabled its report on CEPA, entitled: It's About Our Health! Towards Pollution Prevention - CEPA Revisited. The report was over 350 pages in length and contained 141 recommendations. It called for a virtual redrafting of the Act, including a renewed role for the federal government in environmental protection, and dramatic reform in existing provisions of CEPA, including those related to toxic chemicals and ocean dumping. It also called for an expanded CEPA to include new parts on biotechnology, an environmental bill of rights, biodiversity, coastal zone management, international water pollution, among other areas. By and large, the environmental community was supportive of the Standing Committee's report.⁴

From June to December of 1995, the federal government worked to prepare its response to the Standing Committee's report within the 150-day time line prescribed by Parliamentary procedure. During that time, it became apparent that there was a strong lobby to discredit the recommendations proposed by the Standing Committee.⁵ The primary criticisms indicated that the Committee's recommendations were not based on "sound science," particularly with respect to the assessment and regulation of toxic substances. The criticisms also proposed that the recommendations would weaken the competitiveness of Canadian industry, would damage federal-provincial relations and were inconsistent with existing government policy.

A number of non-governmental groups responded to these criticisms in a document released on October 24, 1995, entitled: At the Environmental Crossroads: The CEPA Review and the Future of Canada's Environment.⁶ This report argues that there is "good science" not only to justify the Standing Committee's recommendations, but to go further. The report also argues that the recommendations are supportive of Canadian competitiveness, and that the recommendations do not have to be an impediment to federal-provincial relations. A copy of this report is appended to this submission as Appendix D.

In the fall of 1994, the results of a recent poll were released at a meeting held by the

⁴ See: Canadian Environmental Law Association, Canadian Institute for Environmental Law and Policy, Great Lakes United, MEDIA RELEASE, "New Federal Environmental Agenda Gets Green Light from Environmental Groups" June 20, 1995.

⁵ R. Matas, "Bureaucrats Pan MP's Environmental Law Proposals" The Globe and Mail October 16, 1995.

⁶ Prepared for Members of the Canadian Environmental Network - Toxics Caucus by Beverley Thorpe with the assistance of Jay Palter and Mark Winfield.

Canadian Council of Ministers of the Environment at Whitehorse, Yukon.⁷ The poll stated that 78% of respondents felt that strict environmental regulations must continue, in spite of the recession of the early 1990s. Seventy percent of respondents stated that governments should restrict chemicals even if there is no proof of harm, so long there is evidence of damage. It is interesting to note that the public support for strong environmental regulations interfaces with a KPMG survey of industrial, municipal, educational and health facilities⁸ that stated that 95% of the respondents considered that compliance with regulations to be the most important motivating factor in determining the enterprise's environmental performance. Only 16% of respondents cited voluntary government programs as important motivators. In a study of the Greater Toronto Area, it was found that "The environment tops the list of areas in which people would like to see more public money spent, with 59% percent favouring increased municipal spending for 'environmental protection' even if it means increases to the taxes or user fees."⁹

During the time of CEPA review, the Canadian public also spoke. Over 16,000 postcards advocating a positive government response were distributed throughout Canada. Many found their way to offices of Ministers of environment, natural resources, finance, agriculture and industry. In addition, 3000 letters were sent by individual Canadians demanding a strong government response. Newspaper opinion articles were written and published across Canada. Attached to this submission as Appendix E is a copy of one of those articles, published in the Hamilton Spectator, the local newspaper of the then Minister of the Environment, Sheila Copps.

On December 15, 1995, the federal government tabled its response to the Standing Committee's report. The document, CEPA Review: The Government Response - Environmental Protection Legislation Designed for the Future - A Renewed CEPA- A Proposal outlined its strategy to amend CEPA. A detailed analysis of the contents of the response is the primary purpose of this submission. Suffice to say at this point is that the media response was mixed.¹⁰ Industry is quoted as endorsing the package of changes.¹¹

⁷ The Environmental Monitor, Canadians and the Environment Presentation to the Canadian Council of Ministers of the Environment, October 23, 1995.

⁸ KPMG, Canadian Environmental Management Survey (1994).

⁹ The GTCC Quality of Life Steering Committee, Comparative Advantage: An Enviably Quality of Life Executive Summary, (October, 1995), p. 6.

¹⁰ Brian McAndrew, "New Pollution Laws to Target Prevention - Revamped Act Likely Ready Next Summer, Copps Says" Toronto Star, December 16, 1995, p. A14; Robert Matas, "Ottawa to Let Citizens Sue Polluters - Proposed Changes to Environmental Law Back Off Biotechnology Controls" Globe and Mail, December 16, 1995, p. A1.

¹¹ Matas, *ibid.*, p. A2.

The environmental community, on the other hand, gave a very critical response. A report card released shortly after the response,¹² gave the federal government a "D" grade. The report card grades each component of the government response. Failing grades were given to the government proposal for biotechnology and international water and air pollution as they would weaken the existing Act. A copy of the report card is appended to this submission as Appendix F.

0.2 The Call for A Strong Federal Role

The federal government has traditionally narrowly interpreted its potential constitutional authority in the field of environmental management. The problems in this approach are well demonstrated in the "harmonization" initiative being undertaken under the auspices of the Canadian Council of the Ministers of the Environment (CCME).

Without a strong federal role, the dynamics of the harmonization process may lead to a "race for the bottom" and the adoption of "lowest common denominator" national standards, if indeed, any national standards are adopted at all. There are additional concerns that the process will result in constraints on the ability of provinces to raise standards independently and to adopt innovative policy approaches.¹³

Minimum standards of environmental quality must be achieved for all Canadians, while providing individual jurisdictions with the freedom to adopt more stringent standards if they wish to do so. Achieving these goals requires the federal government to demonstrate leadership in the environmental field. The federal government must affirm its interest in protecting Canada's environment and make it clear that it will intervene to the full extent of its jurisdictional capacity when it feels that such action is necessary.

The federal government must, through the process to enact a new CEPA, affirm its commitment to be a leader shaping appropriate environmental law and policy in Canada. It must also establish minimum standards for environmental protection for all Canadians through the Act.

¹² The report card was prepared by the Canadian Institute for Environmental Law and Policy and the Canadian Environmental Law Association.

¹³ K. L. Clark and M. S. Winfield, The Environmental Management Framework Agreement-A Model for Dysfunctional Federalism? An Analysis and Commentary, (Toronto: Canadian Institute for Environmental Law and Policy, February 1996).

CHAPTER 1 - GUIDING PRINCIPLES FOR AN EFFECTIVE CEPA

1.1 Introduction

The government proposes to incorporate a number of guiding principles into the Preamble and other elements of CEPA. These generally reflect the recommendations of the House of Commons Standing Committee,¹⁴ and include commitments to sustainable development, pollution prevention, the ecosystem approach, the protection of biological diversity, intergovernmental cooperation, science and the precautionary principle, economic responsibility and user/producer responsibility.

Most of these principles deserve strong support and should be incorporated into a renewed CEPA. However, the government's proposal regarding "economic responsibility," and the introduction of references to "cost-benefit analysis" and "economic flexibility" raise serious concerns and cannot be supported. These references appear to revive the perspective that protection of the environment and economic development are competing objectives in a zero-sum game. They fail to reflect current thinking on the interrelationships between environmental sustainability and economic and social well-being.¹⁵

Furthermore, the primary objective of CEPA should be to contribute to sustainable development through the protection of the environment and human health. This may be achieved through pollution prevention, the adoption of an ecosystem approach to environmental management, the protection of biological diversity and other measures. Public participation in environmental decision-making should also be recognized as being essential to the achievement of environmental sustainability.

1.2 Comments on the Government's Proposals

Government Response 1.1 - Sustainable Development

The government proposes that both the Preamble and Declaration to a renewed CEPA state that the primary objective of CEPA is to contribute to sustainable development, and that sustainable development be defined as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs."

¹⁴ Standing Committee on Environment and Sustainable Development, It's About Our Health!, Chapter 4.

¹⁵ For a review of current literature on this issue, see for example, M. Winfield and J. Rabantek, Putting the Environment in Environmental Industry Strategies: The Role of Environmental Industries in Restructuring for Environmental Sustainability (Toronto: Canadian Institute for Environmental Law and Policy, April 1995).

Recommendation:

- 1) *The Preamble and Declaration of CEPA should state that the primary objective of the Act is to contribute to sustainable development through the protection of the environment and human health. Sustainable Development should be defined as per the Brundtland Definition.*

Government Response 1.2 - Pollution Prevention

The government proposes to amend CEPA to state that the Act is to contribute to sustainable development through pollution prevention.

Recommendation:

- 2) *CEPA should be amended to establish pollution prevention as the priority approach to environmental protection. Pollution prevention should be defined in the Act as "the use of processes, practices, materials, products or energy that avoid or minimize the creation of pollutants and waste, and reduce the potential for harm to human health or the environment."*

Government Response 1.3 - Ecosystem Approach

The government proposes to incorporate the ecosystem approach into the Preamble to the Act.

Recommendation:

- 3) *Reference to the ecosystem approach should be incorporated into the preamble of CEPA. Ecosystems should be defined as per the government's proposals. The Act should define "Ecosystem Approach" as "administering the Act in a manner which maintains the functional integrity of ecosystems," as per the recommendation of the House of Commons Standing Committee on Environment and Sustainable Development.¹⁶*

Government Response 1.4 - Biological Diversity

The government proposes to incorporate in the Preamble to CEPA a reference to Canada's international obligations under the Convention on Biological Diversity.

¹⁶ It's About Our Health! Towards Pollution Prevention, Recommendation 5.

Recommendation:

- 4) *A reference to Canada's international obligations under the Convention on Biological Diversity should be incorporated into CEPA. "Biological Diversity" should be defined as per the Convention.*

Government Response 1.5 - Intergovernmental Co-operation

The government states that it will continue to seek the co-operation of the provinces, territories and aboriginal peoples in resolving inter-jurisdictional issues and co-ordination of environmental measures and eliminating duplication and overlap among measures. This is an important commitment. However, it should also be recalled that intergovernmental cooperation is, at best, an instrumental goal. It should be pursued as a means of achieving a primary goal -- in this case, environmental protection, and enhanced accountability to the public -- and not merely as an end in itself.

Furthermore, it should be noted that the actual incidence of "duplication and overlap" in federal and provincial environmental protection efforts is extremely limited.¹⁷ Greater emphasis should be placed on the gaps in environmental protection which are emerging as a result of reduced resources at all levels of government. The importance of federal leadership on national and international environmental issues, and the role of the federal government in ensuring a minimum standard of environmental quality for all Canadians must also be emphasized.¹⁸

Recommendation:

- 5) *The federal government should initiate, in co-operation with provincial and territorial governments and self-governing aboriginal peoples, a comprehensive and independent review of current federal, provincial, territorial and aboriginal environmental roles, responsibilities and capabilities for the purpose of identifying essential needs and critical gaps in relation to the present and future state of Canada's environment. The review should be conducted on a realistic time-line, and be supported by thorough research, and appropriate and effective mechanisms for public consultation.*

¹⁷ See, for example: Canadian Environmental Protection Act: Report for the Period April 1993 to March 1994 (Ottawa: Environment Canada, 1994), p. 20; and KPMG Management Consulting, Resource Impacts Assessment Study: Environmental Management Framework Agreement Study Report (Ottawa: August 1995).

¹⁸ See, generally, M. Winfield, The Future Role of the Federal Government in the Protection of Canada's Environment (Toronto: Canadian Institute for Environmental Law and Policy, January 1996).

research, and appropriate and effective mechanisms for public consultation.

Government Responses 1.6 and 1.7 - Science and the Precautionary Principle

The government proposes to incorporate a reference to science being an integral component of decision-making under CEPA. The government also proposes to incorporate a reference to the UNCED precautionary principle in the Preamble to CEPA.

Recommendation:

- 6) *The precautionary principle should be incorporated into the Preamble to CEPA. It should be defined to mean that where there are potential threats of harm to the environment or human health, the lack of full scientific certainty should not be used as a reason for postponing preventative or remedial measures.*

Government Response 1.8 - Economic Responsibility

The government proposes to incorporate into CEPA's preamble a reference to the interrelationship of economic and environmental principles, and acknowledge the role of such economic considerations as the "cost-benefit" approach and "flexible economic decision-making." The inclusion of these principles is not supportable. The incorporation of such references would alter the fundamental purpose of the Act, which is the promotion of sustainable development through the protection of the environment and human health.

- 7) *A reference to the interrelationship between the environment, economy and society should be incorporated into the Preamble of CEPA. Reference should not be made to the "cost-benefit approach" or "flexible economic decision-making" in the Preamble or elsewhere in the Act.*

Government Response 1.9 - User/Producer Responsibility

The government states that it agrees with the Standing Committee that the onus should be shifted to the producer, user or importer of a substance to ensure that substances do not pose an unacceptable risk to the environment or human health, and that this principle should be a guiding principle of CEPA.

Recommendation:

- 8) *The principle of User/Producer Responsibility should be incorporated into CEPA. The principle should be defined as meaning where environmental or health effects are reasonably suspected in relation to an activity or substance, the onus should be on the*

proponent or producer to demonstrate safety, rather than on governments to prove harm. In addition, where information gaps exist in relation to an activity or substance, the proponent of the activity, or import, manufacturing or use of a substance, must ensure that all necessary information is available to make an assessment of its potential environmental and health effects.

1.3 Principles Absent in the Government Response

Public Participation

The government response makes no reference to public participation in decision-making as a guiding principle of CEPA.

Recommendation:

- 9) *Public participation in decision-making should be incorporated as a guiding principle into the Preamble to CEPA and throughout the Act.*

1.4 Conclusions

CEPA should seek to promote environmentally sustainable development through the protection of the environment and human health. The guiding principles of the act should include pollution prevention, an ecosystem approach, the protection of biological diversity, intergovernmental cooperation, the precautionary principle, a recognition of the inter-relatedness of the environment, economy and society, user/producer responsibility and public participation in decision-making.

CHAPTER 2 - ADMINISTRATION OF CEPA

2.1 Introduction

The Standing Committee recommended significant changes to the administrative provisions of CEPA. Its provisions related to intergovernmental environmental agreements (Recommendation 137) the use of economic instruments (Recommendation 33) and non-regulatory approaches to environmental protection (Recommendation 36), and its future review (Recommendation 141).

2.2 Comments on the Government's Proposals

Government Response 2.1 and 2.4 - Advisory Committees

The government proposes to continue to provide for the appointment of advisory committees drawn from a variety of backgrounds.

Recommendation:

- 10) *CEPA should continue to provide for the appointment of advisory committees drawn from a variety of backgrounds.*

Government Response 2.2 and 2.3 - CEPA National Advisory Committee

The government proposes to expand the current CEPA Federal-Provincial Advisory Committee to include representatives of Territorial governments and Aboriginal People and rename it the National Advisory Committee. The National Advisory Committee would assume the current roles of the FPAC.

Recommendation:

- 11) *CEPA should be amended to replace the existing Federal-Provincial Advisory Committee with a National Advisory Committee of federal, provincial, territorial and aboriginal representatives.*

2.2.1 Equivalency and Administrative Agreements

Government Response 2.5 - Scope of Equivalency and Administrative Agreements

The government proposes to expand the scope of equivalency and administrative agreements to all parts of CEPA. Experience with such agreements is limited and there is growing

evidence of problems with their implementation and effectiveness.¹⁹ These concerns are reinforced by the track records of most of the provinces with the enforcement of the pollution prevention²⁰ and habitat protection requirements of the Fisheries Act.²¹

Recommendations:

- 12) *The use of administrative and equivalency agreements should not be expanded until an independent review of the implementation and effectiveness of the existing agreements has been completed.*
- 13) *As recommended by the Standing Committee (Recommendation 138) criteria for the establishment of such agreements should be developed by Environment Canada. These should include as a precondition of establishment of an agreement the resources and technical capacity required to administer and implement the CEPA regulations in question.*
- 14) *Equivalency Agreements should only be permitted where whistleblower protection and citizen enforcement provisions, similar to those proposed under CEPA,²² exist under the "equivalent" provincial or territorial law.*

Government Response 2.6 - Equivalency and Administrative Agreements with the Territories

The government proposes that territorial governments be permitted to enter into CEPA administrative and equivalency agreements.

¹⁹ Regarding the Canada-Alberta Agreement the results of the 1994 *R.v. Proctor and Gamble Inc* prosecution must give rise to serious concern. See Environmental Law Centre News Brief, Vol. 9, No. 2, 1994. Regarding the Canada-British Columbia Agreement see S. Ochman, "Harmonization:" The Federal/Provincial Agreement on Effluent Controls (Whaletown, B.C: Reach for Unbleached, January 1996).

²⁰ See, for example, Kenneth M. Dye, Report of the Auditor-General of Canada to the House of Commons (Ottawa: Minister of Supply and Services, 1990).

²¹ See F.S. Gertler and Y. Corriveau, ENGO Concerns and Policy Options Regarding the Administration and Delegation of Subsection 35(2) of the Fisheries Act, Proposed Section 35(3) and Consequences for Federal Environmental Assessment (Montreal: Quebec Environmental Law Centre, January 1996).

²² Environmental Protection Legislation Designed for the Future, para 3.8 and 3.9 (Recommendations 35, 37, 63 and 64 of this brief).

Recommendation:

- 15) *CEPA should be amended to permit Territories to enter into CEPA administrative and equivalency agreements, subject to their ability to meet the criteria proposed for such agreements including as a precondition to the agreement the resources and technical capacity required to administer and implement the CEPA regulations in question; and in the case of equivalency agreements, provisions for citizen requests for investigations, whistleblower protection, and citizen enforcement actions.*

Government Response 2.7 - Administrative Agreements with the Aboriginal Peoples

The government proposes to permit the Minister of the Environment to enter into administrative agreements with Aboriginal Peoples to administer CEPA regulations.

Recommendation:

- 16) *CEPA should be amended to permit Aboriginal peoples to enter into agreements to administer CEPA regulations on their territories, conditional on the existence of the necessary technical and fiscal resources.*

Government Response 2.8 - Ratification of Administrative and Equivalency Agreements

The government proposes to provide for the pre-publication of proposed administrative and equivalency agreements and a sixty day public comment period prior to their approval. The Minister of the Environment would be required to account for how all comments received were handled. The Standing Committee on Environment and Sustainable Development would be permitted to review proposed agreements during the sixty day period.

The government's proposals represent some significant progress in this area. However, the government has rejected the Standing Committee's proposal for a positive resolution procedure for the ratification of equivalency and administrative agreements. Furthermore, under House of Commons rules, the Standing Committee already has the discretion to review proposed agreements under its jurisdiction on its own initiative.²³ However, the government is under no obligation to delay the implementation of agreements until the Committee has completed its review and tabled a report. Adequate time should be provided for the Standing Committee to review a proposed agreement if it chooses to do so.

The establishment of a more effective parliamentary oversight mechanism is particularly important in relation to equivalency agreements, which have the legal effect of suspending the

²³ House of Commons, *Standing Order 108*.

application of federal regulations. Such agreements should, therefore, be subject to the same form of parliamentary oversight mechanisms as federal regulations themselves, and in particular a negative resolution procedure.²⁴ Given the specialized nature of these agreements, the Standing Committee on Environment and Sustainable Development, or its successor, rather than the Standing Joint Committee for the Scrutiny of Regulations, should be designated as the originator of a negative resolution for equivalency agreements.

Recommendation:

17) *CEPA should be amended to provide:*

i) *Pre-publication and Public Review:*

- * *proposed administrative and equivalency agreements should be required to be pre-published in the Canada Gazette, followed by a minimum sixty day public comment period;*
 - * *the minister should be required to publish in the Canada Gazette an accounting of how all comments received during the comment period were handled; and*
 - * *the final texts of agreements, following approval by the Governor in Council, should be published in the Canada Gazette and on the proposed public registry.*
- ii) *Review by House of Commons Standing Committee on Environment and Sustainable Development.*²⁵

²⁴ Re: the negative resolution procedure for regulations see House of Commons, *Standing Orders*, 123-128. The process is initiated by the Standing Joint Committee of the House of Commons and Senate for the Scrutiny of Regulations. Where the Committee considers that a regulation should be annulled, it can make a report to the House containing a resolution to the effect that the particular regulation be revoked. Unless the House considers the report and votes against it, the House is deemed to have concurred with the resolution contained in the Report at the end of fifteen sitting days after the motion for concurrence with the report is placed in the Order Paper. The disallowance procedure has been used four times since its introduction.

²⁵ This model follows the proposal presented by the Subcommittee on Regulations and Competitiveness of the House of Commons Standing Committee on Finance regarding committee reviews of proposed regulations (Regulations and Competitiveness January 1993, recommendation 5.3).

- * *the House of Commons Standing Committee on Environment and Sustainable Development, or its successor, should be given thirty days following the publication of a proposed equivalency or administrative agreement to determine if it wishes to review the agreement, and another sixty days in which to conduct its review and present a report and recommendations;*
- * *the Standing Committee should be permitted to extend the review period, perhaps by an additional sixty days, if it feels this is necessary to complete its review;*
- * *agreements should not be approved by the Governor in Council or published in the Canada Gazette until the Standing Committee has completed its review if the Standing Committee has chosen to exercise its right of review; and*
- * *a negative resolution procedure, similar to that which exists for regulations, should be established for proposed equivalency agreements.*

Government Response 2.9 - Sunset Clauses

The government proposes that five-year sunset clauses be inserted into administrative and equivalency agreements.

Recommendation:

- 18) *CEPA should be amended to require the insertion of sunset clauses into administrative and equivalency agreements, with the result that agreements expire five years after coming into force. Provision should also be made for the independent review of administrative and equivalency agreements prior to their renewal.*

Government Response 2.10 - Annual Reports

The government proposes to continue the requirement for annual reports to Parliament on the administration and enforcement of CEPA regulations which are subject to administrative or equivalency agreements (CEPA ss. 98(3) and 34(10)).

Recommendation:

- 19) *The requirement for annual reports to Parliament on the administration and enforcement of CEPA regulations subject to administrative agreements, and of "equivalent" provincial regulations should be maintained and strengthened. In particular, annual reports should be required to include information regarding:*
 - * *collection of monitoring data as required by the CEPA regulations in provinces*

where these regulations are subject to administrative agreements, or under "CEPA equivalent" provincial regulations;

- * the number, cause and results of public requests for investigations made under section 108 of CEPA or "equivalent" provincial legislation;
- * the number, cause and results of civil actions initiated under section 136 of CEPA, and the civil cause of action proposed in 3.9 of the government response; and
- * the numbers and results of inspections, investigations, warnings, injunctions and prosecutions related to CEPA regulations administered through administrative agreements with provinces, territories or self-governing aboriginal peoples, and provincial regulations deemed "equivalent" to CEPA regulations for the purposes of equivalency agreements.

Government Response 2.11 - Federal Authority Affirmation Clauses in Administrative Agreements

The government proposes to maintain clauses that provide for the retention of full authority for the federal government to enforce CEPA and for accountability to the Minister of the Environment before Parliament for CEPA and the implementation of any agreements made under the Act.

Recommendation:

- 20) *CEPA should be amended to require insertion of clauses retaining the full authority for the federal government to enforce CEPA and for accountability to the Minister of the Environment before Parliament for CEPA and the implementation of any agreements made under the Act in future administrative agreements.*

Government Response 2.12 - General Agreements for Environmental Management

The government proposes to expand the provisions of the Department of the Environment Act to permit the Minister of the Environment to enter into agreements for environmental management with self-governing Aboriginal Peoples. The government also proposes to include in such agreements the same accountability and procedural requirements as those proposed for CEPA's administrative and equivalency agreements. The government response sites the Minister's authority under the Department of the Environment Act as the basis for these agreements, and for efforts undertaken to create the Harmonization agreement spear-headed by the CCME.

It should be noted that extremely serious concerns have been raised by environmental non-governmental organizations, organized labour, First Nations and aboriginal people's organizations, members of the academic community and others, regarding the proposed

CCME environmental "harmonization" agreement [the draft Environmental Management Framework Agreement(EMFA)].²⁶ Many have recommended that the federal government not proceed with the proposed EMFA. Even some industry associations have expressed concern over the weakening of federal environmental responsibilities contained in the proposed CCME agreement.²⁷

In addition, as noted earlier, serious questions are beginning to emerge regarding the effectiveness of the CEPA administrative and equivalency agreements which have been concluded to date.²⁸ Finally, the proposed EMFA (October 1995 draft) would seem to contain provisions which go beyond the general authority provided to the Minister of the Environment to conclude intergovernmental environmental agreements by the Department of the Environment Act.

Recommendations:

- 21) *The Department of the Environment Act should be amended to permit the Minister of the Environment to enter into general environmental management agreements with self-governing Aboriginal Peoples.*
- 22) *The Department of the Environment Act provisions regarding general agreements for environmental management should be amended to provide the same accountability and procedural requirements as those proposed for CEPA administrative and equivalency agreements including:*
 - i) *Pre-publication and Public Review:*
 - * *proposed environmental management agreements should be required to be pre-published in the Canada Gazette, followed by a minimum sixty day public comment period;*
 - * *the Minister should be required to publish in the Canada Gazette an accounting of how all comments received during the comment period were handled; and*

²⁶ See, for example, K. Clark and M. Winfield, The Environmental Management Framework Agreement: A Model for Dysfunctional Federalism? An Analysis and Commentary.

²⁷ Canadian Chemical Producers Association, "Preliminary Comments and Analysis of June 1995 CCME Environmental Management Framework Agreement," December 20, 1995.

²⁸ See, for example, Ochman, "Harmonization: The Federal/Provincial Agreement on Effluent Controls."

- * *the final texts of agreements, following approval by the Governor in Council, should be published in the Canada Gazette and on the proposed public registry.*
- ii) *Review by House of Commons Standing Committee on the Environment and Sustainable Development:*
 - * *the House of Commons Standing Committee on Environment and Sustainable Development, or its successor, should be given thirty days following the publication of a proposed environmental management agreement to determine if it wishes to review the agreement, and another sixty days in which to conduct its review and present a report and recommendations;*
 - * *the Standing Committee should be permitted to extend the review period by an additional sixty days, if it feels this is necessary to complete its review; and*
 - * *agreements should not be approved by the Minister or published in the Canada Gazette until the Committee has completed its review if the Committee has chosen to exercise its right of review.*
- iii) *there should be sunset clauses in environmental management agreements, with the result that agreements expire five years after coming into force. Provision should also be made for the independent review of agreements prior to their renewal.*
- iv) *environmental management agreements should provide for the preparation and delivery to Parliament of annual reports on the implementation of environmental management agreements.*
- v) *there should be clauses retaining the full authority for the federal government to enforce federal environmental laws and for accountability to the Minister of the Environment before Parliament for federal environmental laws and the implementation of any agreements made under the Act.*

Government Response 2.13 - Economic Instruments

The government proposes to amend CEPA to enable the use of tradeable permit systems, deposit-refund systems and direct financial incentives in CEPA. The use of environmental taxes or charges and financial incentives in the form of tax measures would be recommended to the Minister of Finance by the Minister of the Environment. No authority for such instruments would be placed directly in CEPA.

Authority for the use of environmental taxes and charges should be directly incorporated into CEPA, in order to facilitate the use of such instruments. Revenues from such charges could be dedicated for environmental purposes, such as environmental remediation, and the development of pollution prevention technologies.

With respect to tradeable permit systems, serious concerns have been raised regarding the effectiveness, efficiency and fairness of such schemes, particularly with respect to emissions of pollutants into the environment.²⁹ Their incorporation into CEPA therefore should be approached with great caution and the necessary legislative provisions designed with care.³⁰ As stated in the government's response, the Act currently appears to provide the authority necessary to facilitate some trading in the context of the phasing-out of production, as demonstrated by the provisions of the CEPA Ozone-Depleting Substances Regulations. The desirability of providing for trading schemes beyond clearly limited circumstances as substance phase-out is open to serious question.

Recommendations:

- 23) *Section 34 of CEPA should be amended to permit the use of deposit-refund systems in relation to, and imposition of taxes and charges on, the use, manufacture, sale, import, export, or release into the environment of substances found to be "toxic" for the purposes of the Act.*
- 24) *CEPA should be amended to permit the imposition of ocean disposal fees, based on the nature and volume of wastes being dumped.*
- 25) *CEPA should be amended to permit the imposition of environmental taxes and charges in relation to sources of transboundary air and water pollution within Canada.*
- 26) *CEPA should be amended to permit the imposition of environmental taxes and charges in relation to the import and export of hazardous and solid wastes.*

²⁹ See, for example, B. Rutherford and M. Winfield, "CEPA and Economic Instruments," in M. Winfield, ed., Reforming the Canadian Environmental Protection Act: A Submission to the House of Commons Standing Committee on Environment and Sustainable Development, (Toronto: Canadian Institute for Environmental Law and Policy, September 1994).

³⁰ See: L. Nowlan and C. Rolfe, Economic Instruments and Environmental Protection: Selected Legal Issues (Vancouver: West Coast Environmental Law Research Foundation, 1993).

Government Response 2.14 - Non-Regulatory Approaches to Environmental Protection

The government proposes to consult on providing the Minister the authority under the Department of the Environment Act to enter into binding environmental performance contracts with private sector actors and other government departments to improve their environmental performance. Such approaches would only be used for "non-regulated" aspects of substances.

This proposal reflects the federal government's increasing emphasis on non-regulatory approaches to the establishment of standards and guidelines, particularly in the environmental field. Over the past two years, Environment Canada has entered into a series of voluntary pollution prevention agreements in the Great Lakes basin with major industrial sectors such as automotive manufacturing, and automotive parts manufacturing.³¹

Governments and industry argue that such agreements are more cost-effective and more accommodating of innovation than regulations.³² Non-industry stakeholders, on the other hand, have been highly critical of these agreements. Environmental and labour organizations have argued that, while they have no objections to voluntary industry pollution prevention initiatives, they are seriously concerned by the implications of governments entering into formal, signed agreements in relation to such initiatives.

Critics of the agreements argue that they represent a return to bilateral industry-government policy-making, are unenforceable, are unlikely to be cost-effective, and are being employed as a substitute for, rather than a supplement to, a federal regulatory framework for toxic substances.³³ These concerns also have been expressed by some industry representatives,³⁴ and were reflected in the House of Commons Standing Committee on Environment and Sustainable Development's report on the review of the Canadian Environmental Protection

³¹ The Automotive Manufacturing Pollution Prevention Project (June 1993) and the Automotive Parts Manufacturing Pollution Prevention Project (December 1993).

³² Karen L. Clark, The Use of Voluntary Pollution Prevention Agreements in Canada: An Analysis and Commentary (Toronto: Canadian Institute for Environmental Law and Policy, April 1995).

³³ See, for example, P. Muldoon, "Drawbacks to voluntary pollution prevention agreements in Canada," The Great Lakes United, Vol. 9., No. 2, Fall 1994.

³⁴ Gary T. Gallon, "Voluntary Programs and Regulation: How to make environmental initiatives more effective and fair," Hazardous Materials Management, August/September 1995.

Act.³⁵

The Canadian government's use of these agreements has been inconsistent with the approach taken by other Organization for Economic Cooperation and Development (OECD) jurisdictions. In the case of the United States, for example, voluntary pollution prevention programs are employed as a supplement to a comprehensive environmental regulatory framework. The Environmental Protection Agency's 33/50 program, for example, is based on statutory reporting requirements related to the Toxics Release Inventory (TRI) and does not involve formal industry-government agreements.³⁶ In the Netherlands, individual firms' "voluntary" commitments are written into their formal environmental approvals.³⁷

There are a number of additional concerns with respect to the government's specific proposal regarding the Department of the Environment Act. These include questions regarding the legal status of such agreements, and questions of how they would relate to provincial approvals and other legal provincial requirements.

If authority for such agreements is included in the Department of the Environment Act, there must be requirements for public consultation in the development of agreements, they must require specific performance outcomes within set timetables and public reporting and access to data. The provision of financial assurances to ensure performance must also be a legislative requirement. The assurances could take the form of cash, a letter of credit from a bank named in Schedule I of the Bank Act, a bond of a guarantee company approved under the Guarantee Companies Securities Act (Ontario) or similar provincial legislation, or a pledge of assets.³⁸

2.2.2 Reporting

Government Response 2.15 - Annual Reports

The government proposes that the current requirement for annual reports on the administration and enforcement of CEPA should be maintained.

³⁵ House of Commons Standing Committee on Environment and Sustainable Development, It's About Our Health! Towards Pollution Prevention: CEPA Revisited (Ottawa: House of Commons, June 1995), Recommendation 36.

³⁶ See: Clark, The Use of Voluntary Pollution Prevention Agreements, pp. 21-26.

³⁷ Declaration of Intent on the Implementation of Environmental Policy for the Chemical Industry," (The Hague, Government of the Netherlands, April 1993), s.9(c).

³⁸ These possibilities reflect the provisions of s.145 of the Ontario Mining Act, R.S.O., 1990 regarding the provision of financial assurances in relation to the closure of mines.

Recommendation:

- 27) *The current requirement for annual reports to Parliament on the administration and enforcement of CEPA should be maintained.*

Government Response 2.16 - Parliamentary Review

The government proposes to amend CEPA to provide for Parliamentary reviews of the statute every seven years. The government states that "this review would include the applicability of CEPA to aboriginal peoples and aboriginal lands." It is unclear if this is intended to mean that the focus of the next review will be on the relationship between CEPA and Aboriginal Peoples and aboriginal lands, or if all subsequent reviews are to address these issues.

Given the rapid developments occurring in environmental science, the proposed seven year review period seems excessive, particularly given the delays experienced in the first review.

Recommendation:

- 28) *CEPA should be amended to provide for a review of the Act every five (5) years by the House of Commons Standing Committee on Environment and Sustainable Development or its successor.*

Government Response 2.17 - Cost Recovery

The government proposes to amend CEPA to allow for cost recovery in every instance where a service of a beneficial nature is provided. Full-cost recovery and user-pay systems are consistent with the polluter pays principle and have the potential to ensure that the capacity of Environment Canada and Health Canada to protect the environment and health of Canadians is maintained.

However, cost recovery in relation to other services raises significant questions. In particular, cost recovery from members of the public for information under CEPA, such as access to the proposed public registry, National Pollutant Release Inventory data, data from the proposed Biotechnology Release Inventory, and data on toxic substances, and for activities such as the filling of requests for investigations, could present significant barriers to public participation in decision-making and public accountability for the decisions made.

Recommendation:

- 29) *CEPA should be amended to provide for full-cost recovery from proponents in:*

* *the issuing of ocean dumping permits;*

- * *notification and assessment procedures for new substances, and biotechnology products, including the monitoring of field trials;*
- * *transboundary movements of hazardous and solid wastes; and*
- * *the issuing of import/export or other permits in relation to "toxic" substances regulated under Section 34 of CEPA.*

2.3 Conclusions

The proposed "administrative" amendments to CEPA include a wide range of important subjects, including federal-provincial relations, the use of economic instruments, cost recovery, and the future review of the Act. It is recommended that the CEPA be amended to expand participation in its mechanisms for intergovernmental cooperation to include territorial governments and Aboriginal Peoples. In addition public and parliamentary accountability mechanisms in relation to the use of intergovernmental agreements under the Act should be strengthened significantly.

It is also recommended that provision be made for the use of deposit-refund systems and environmental charges under the Act. A full-cost recovery, user-pay system should be established in relation to the granting of approvals under the Act. Finally, it is recommended that provision be made for a review of the Act by the House of Commons Standing Committee on the Environment, or its successor, every five years.

CHAPTER 3 - PUBLIC PARTICIPATION AND ENVIRONMENTAL RIGHTS

3.1 Introduction

Canadians need and want legal tools to protect the environment. Presently, CEPA does not provide these tools. There are few areas where there is mandated public participation and even fewer where environmental rights are granted.

3.2 The Need for a CEPA Environmental Bill of Rights

At the present time, there is no right to a healthy environment, or for that matter, any other environmental right entrenched in the Canadian constitution. The "second best" alternative is to have a comprehensive set of environmental and worker rights given through a statute. Although ideally this should be undertaken through a separate statute, the inclusion of a list of environmental and worker rights in CEPA would be a positive and needed step in this direction.

A number of submissions to the Standing Committee on Environment and Sustainable Development provided a detailed agenda for the inclusion of environmental and worker rights in the Act.³⁹

Further, in Chapter 14 of its report, the Standing Committee on Environment and Sustainable Development made a number of important recommendations to further environmental and worker rights. These include:

- * in the establishment of a public registry on the environment;[recommendation 111]
- * in the right to notice and comment on all proposed regulations, objectives, guidelines, codes of practice, agreements, permits and other matters dealt with under the Act;[recommendation 112]

³⁹ See: West Coast Environmental Law Association, Ensuring Meaningful Public and Worker Involvement in Environmental Protection Under CEPA September, 1994. A copy of this report is included in Appendix A. Also see, Standing Committee on Environment and Sustainable Development, recommendation 123, see above. Further see: F. Gertler, P. Muldoon and M. Valiante, "Public Access to Environmental Justice" Report of the Canadian Bar Association Committee, Sustainable Development in Canada: Options for Law Reform (September 1990), pp. 79-97.

- * in expanded rights to:
 - (a) file notice of objections and require boards of review;
 - (b) request a review of existing policies, regulations or other instruments; and
 - (c) expedite the regulation of toxic substances.[recommendation 113]
- * in the inclusion of general whistle blower protection for workers and the public;[recommendation 116]
- * in improvements to the administration of the existing right to request an investigation;[recommendation 117]
- * in the right for citizens to bring a civil action against any party who has violated or is about to violate a provision of the Act or regulations;[recommendation 119]
- * in the right for citizens to seek a civil remedy for the creation of environmental risk where the measure of damages would be proportional to the increased risk caused by the defendant;[recommendation 120]
- * in the right for citizens to undertake a private prosecution be affirmed and the articulation of rights of the public where the Attorney General decides to pursue a prosecution initiated by a citizen;[recommendation 121]
- * the creation of an environmental fund to be used for a variety of environmental protection activities, including the remediation of emergencies and contaminated sites and to fund groups and individuals under a participant funding program;[recommendation 122]
- * in the establishment of a participant funding program that would be funded from the monies in the environmental fund;[recommendation 123] and
- * the Government of Canada to develop comprehensive federal legislation respecting the environmental rights of Canadians and Canadian workers.[recommendation 124]

The Standing Committee's recommendations are in line with experience at the provincial level. Over the years, there has been a trend at the provincial level to grant residents environmental rights to protect the environment.⁴⁰ The Quebec Environmental Quality Act was seminal in providing a number of rights, albeit limited in their nature and scope, to bring

⁴⁰ For an in-depth review of this trend and the status of environmental rights in Canada, see: Paul Muldoon and Richard Lindgren, The Environmental Bill of Rights: A Practical Guide (Toronto: Emond Montgomery Publications, 1995), Chapter 1; Paul Muldoon and John Swaigen, "Environmental Bill of Rights" in David Estrin and John Swaigen (eds.) Environment on Trial: A Guide to Ontario Environmental Law and Policy (3rd) (Toronto: Emond Montgomery Publications, 1993), Chapter 25.

an action against environmentally harmful activities. Since that time, a number of provinces have enacted some type of an environmental bill of rights, such as Northwest Territories, the Yukon and Ontario. These jurisdictions grant a broad array of rights. In addition, a number of other provinces have made proposals for environmental rights.⁴¹

Finally, support for enhanced public participation and environmental rights can be found in the document, The Environment: A Liberal Vision. Three changes were proposed for the legal framework. The first change called for an Environmental Bill of Rights. The document noted that:

As we reform the economy from an environmental perspective, so must we do for the legal system. At present, the legal system in Canada discourages citizens from bringing law suits in the public interest against polluters to make them accountable for the damages they cause. This can be remedied by legislating an Environmental Bill of Rights that entitles Canadians to a healthy environment by guaranteeing:

- * in the right to use courts to ensure that federal environmental laws are properly obeyed and enforced; and

- * in the right to participate fully in the federal government's environmental decision-making.⁴²

The Liberal Party, in its policy document, Creating Opportunity: The Liberal Plan for Canada, noted that "Individual Canadians are far ahead of their governments in their desire for environmental protection... A new Liberal government will build on this public awareness and give individuals new tools to protect the environment and to participate in environmental decision-making."⁴³ The document also endorsed the proposal for a legal right to sue those breaking environmental laws.⁴⁴

⁴¹ Ibid.

⁴² Paul Martin, Critic for the Environment, The Environment: A Liberal Vision Executive Summary, Discussion Paper, March, 1992, pp. 22-23.

⁴³ Liberal Party of Canada, Creating Opportunity: The Liberal Plan for Canada 1993, p. 68.

⁴⁴ The document stated that "Individual Canadians have expertise and a valued perspective to contribute to environmental policy-making... We will use the forthcoming review of the Canadian Environmental Protection Act to examine giving members of the public access to the courts as a last recourse if the federal government persistently fails to enforce environmental law." Ibid., p. 69.

Recommendation:

30) *It is recommended that CEPA include a comprehensive set of environmental and worker rights, which can evolve into a CEPA environmental bill of rights. The proposal for a CEPA environmental bill of rights would include the following:*

- (i) a declaration of public trust over federal lands and natural resources over which the federal government has jurisdiction;*
- (ii) a provision to allow citizen suits under CEPA and reform of the law relating private prosecutions;*
- (iii) a provision to remove the barriers to civil causes of action for breaches of CEPA and its regulations;*
- (iv) a right to request reviews of the adequacy of existing federal regulations to protect the environment; and*
- (v) a right to receive notices and provide comments on proposed decisions.*

Worker rights should include:

- (i) the right to a joint worker-management environment committee, or a joint health and safety committee where a joint environment committee is not appropriate;*
- (ii) the right to refuse to pollute;*
- (iii) the right to environmental information from the employer;*
- (iv) the right to have transition mechanisms where job dislocation arises as a result of a move to cleaner technology;*
- (v) worker representatives must have the right to take part in environmental inspections and investigations, similar to those rights with respect to occupational hazards; and*
- (vi) the Federal Workplace Hazardous Materials Information (WHMIS) should be amended to require that Material Safety Data Sheets (MSDS) include information regarding environmental hazards and precautions for clean-up of spills and other environmental risks.*

3.3 Comments on the Government's Proposals

The government response did include a few proposals for reform affecting environmental and worker rights. A review of these proposals will be undertaken in this section. Necessary environmental and worker rights that are absent in the government response will be discussed in the next section.

Government Responses 3.1 and 3.2 - Establishment of a Government Registry

The government proposes to create an electronic public registry for environmental information. The proposal includes the kinds of information that would be included in the

Registry along with the proposal to include authority to adopt cost recovery measures.

The need for such mechanisms has been recognized by the Information Commissioner of Canada.⁴⁵ Similar mechanisms are already in place in various jurisdictions, notably Ontario,⁴⁶ and were recommended by the Standing Committee on Environment and Sustainable Development.⁴⁷

Overall, the proposal for an environmental registry is strongly supported. Moreover, the kinds of information proposed to be placed on the registry is also highly supported.

Four issues are of concern in the furtherance of this proposal.

First, like the Ontario environmental registry under the Environmental Bill of Rights, there must be a positive legal obligation to establish the registry enshrined in CEPA. When the registry is entrenched in law, the registry will be protected, at least to some extent, from quick budget cuts and political decisions. This, in turn, will give the registry the stability and longevity required in order for the public to make good use of it.

Second, the kinds of information that would be placed on the registry should be expressly listed in a regulation. This regulation can be updated from time to time to allow for the further inclusion of information. Explicit requirements for the kind of information to be listed will ensure greater certainty, predictability and quality control for the registry's contents.

Third, the registry should be developed with an advisory committee composed of members of the public, in particular, environmental and worker representatives. Because these constituencies will be the primary users of the service, it is important to understand what is needed and to gain the experience from jurisdictions where registries are in place.

Finally, as an overall principle, the proposal to include authority to adopt cost recovery measures to maintain the public registry is supportable. However, this principle should be fashioned in a way so as not to act as a barrier or impediment to public access. The principle should be amended to include guaranteed access by the public to the registry.

Recommendations:

- 31) *The proposal for an environmental registry is highly supported along with the kinds of information that is intended to be placed on the registry. However:*

⁴⁵ Information Commissioner of Canada, Annual Report, Information Commissioner, 1993-1994 (Ottawa: Supply and Services, 1994), at 10.

⁴⁶ Environmental Bill of Rights, 1993, S.O. 1993, c. 28, ss. 5 and 6.

⁴⁷ Recommendation 111, see above.

- (a) *The obligation for the Minister of the Environment to create such a registry should be enshrined in a renewed CEPA;*
- (b) *The information that is proposed to be listed in the registry is supported, although it should be articulated in a regulation once the registry is established;*
- (c) *The registry should be developed with the assistance of a public advisory committee; and*
- (d) *While there is support for the authority to adopt cost recovery measures to maintain the public registry, the principle must be fashioned in a way to also include the right of the public to have access to this information.*

Government Responses 3.4 to 3.6 - Right to Request an Investigation

The government does not propose to significantly amend the existing right to an investigation under section 108 of CEPA. Instead, three administrative proposals are made. First, a pamphlet would be written outlining the purpose of CEPA and the rights and remedies that members of the public have under CEPA. Section 109 would be amended so that the Minister would be required to provide a final report on the investigation to the applicants, regardless of whether any action has been taken. Third, a standard form would be available upon request that can be used by applicants to request an investigation.

All of these recommendations were supported by the Standing Committee on Environment and Sustainable Development.⁴⁸

Recommendation:

- 32) *The proposal to provide administrative changes to the right to an investigation, and in particular, public education material, the requirement for a section 109 final report and a standard form for the exercise of the right, are all supported.*

Government Response 3.7 - Citizens' Reporting of Violations

The government proposes to continue to encourage the public to prevent violations of CEPA by (a) informing the Minister of the Environment; or (b) by seeking a court injunction, which would direct that activity to be stopped.

⁴⁸ Recommendation 117, see above.

The origins of this proposal are unclear. Moreover, there is no indication as to what reform results from this proposal. The proposal states that where a person believes that there is a violation of CEPA, the Government of Canada "proposes to continue to encourage the public to prevent violations of CEPA (a) by informing the Minister of the Environment, or (b) seeking a court injunction, which would direct that an activity be stopped." [Emphasis Added]

Certainly, anyone now can inform the Minister of the Environment about any violation, although the enforcement branch would be a more direct route. What is genuinely confusing is the statement that the government will "continue to encourage" the use of a court's injunctive power.

At the present time, citizens only have three options in this regard. Citizens can rely on the common law as a basis to seek injunctive relief. There are, however, two significant obstacles to this remedy. The first obstacle is that most citizens would probably not have standing to bring the action unless their health or property were directly affected.⁴⁹ Second, any claimant would also have to show that there is a basis for their action, such as the defendant being in breach of a statute. Finally, the usual requirement of the plaintiff posting security for costs in an action for injunctive relief is prohibitive for most citizens.

The second option available to citizen claimants is section 136(2) of CEPA which permits injunctive relief. This section, however, has not been much used because of a barrier similar to that described above for civil injunctions. A pre-condition to using section 136(2) is that the person applying for relief must have "suffered loss or damage as a result of conduct that is contrary to any provision" of CEPA or its regulations. This qualification effectively excludes all citizens who would act in the public interest to halt violations of a federal law and who cannot establish that they have "suffered loss or damage as a result of the conduct."

To further the intention of government, specific amendments to CEPA should allow citizens to seek injunctive relief for violations of CEPA. This provision could be modelled after the provision of the Quebec Environment Quality Act that allows citizens to bring an action for an injunction to prohibit any act or operation that interferes with the right to a healthy environment as defined in the Act.⁵⁰ The Quebec statute also limits the security deposit for costs to a maximum amount of \$500.00.

The most direct way of furthering this intention is to redraft section 136(2) of CEPA to remove the qualification that a person must have suffered loss or damage resulting from a violation of CEPA. Further, there should be a limit on the amount of a security deposition

⁴⁹ Marcia Valiante and Paul Muldoon, "A Foot in the Door: A Survey of Recent Trends in Access to Environmental Justice" in S. A. Kennett(ed.) Law and Process in Environmental Management (Calgary: Canadian Institute of Resource Law, 1993), pp. 142-169.

⁵⁰ Environment Quality Act R.S.Q. c. Q-2, as amended, s.19.1.

for costs.

Recommendation:

33) *In principle, government proposal 3.7 that encourages the use of injunctive power to prevent violations of CEPA is supported. However, for it to be effective, it is necessary to reword section 136(2) to the following:*

(2) *Any person may seek an injunction from a court of competent jurisdiction to order the person engaged in the conduct:*

- (a) *to refrain from doing any act that it appears to the court causes or will cause loss or damage; or*
- (b) *to do any thing that appears to the court will prevent the loss or damage; or*
- (c) *Any person seeking such relief from the court shall not be required to post security for costs in an amount greater than \$500.00.*

This right should correspond to the citizen suit discussed below.

Government Response 3.8 - "Whistleblower" Protection

Under the government response, whistleblower protection is proposed to be broadened to apply to anyone who voluntarily reports violations of CEPA and anyone who is a federally-regulated employee. Under this protection, the person would be protected from dismissal, harassment or discipline in the workplace owing to their reporting of a CEPA violation.

Recommendation:

34) *The government proposal pertaining to the broadened "whistleblower" protection is fully supported.*

Government Response 3.9 - The Right to Sue

The government proposes to include a right for citizens to take civil action against a party who has violated CEPA or its regulations. In principle, the right to sue is strongly supported. It was a core part of the submission by a number of groups⁵¹ and supported by the Standing

⁵¹ For a more in-depth submission on this matter, see: Canadian Institute for Environmental Law and Policy, CEPA and Environmental Law Enforcement A Submission to the Standing Committee on Environment and Sustainable Development, (September, 1994),

Committee on Environment and Sustainable Development.⁵²

However, this right as set out in the government response is restrictively qualified. In order to invoke this right, the following conditions apply:

- * in the violation must result in significant harm to the environment;
- * in there must first have been an application under section 108 of CEPA and the Minister took an unreasonable amount of time to respond or the Minister's response was unreasonable;
- * in there can be no personal gain resulting from the action; and
- * in other qualifications similar to the Ontario Environmental Bill of Rights.

The additional qualifications in the Environmental Bill of Rights include:

- * in the action must be with respect to actual or imminent harm to a public resource;
- * in actions with to harm to public resources from odour, noise, dust resulting from an agricultural operation unless they have gone through a process pursuant to the Farm Practices Protection Act;
- * in the establishment of new defences, such as the defence that an instrument is not contravened if the defendant satisfies the court that the defendant complied with an interpretation of the instrument that the court considers reasonable;
- * in the imposition of the court's broad discretion to stay or dismiss the action, including having regard to "economic" concerns;
- * in a prohibition from the imposition on the award of damages; and
- * in the usual "loser pays" cost rules continues apply.

Depending how one reads the right to sue provisions of the Environmental Bill of Rights, the qualifications may indeed number more than the ten listed above.

The experience under the Ontario law is instructive. In the two years since the Bill of Rights became law, no citizen has ventured to use the right to sue provisions. In effect, the enormous number of qualifications have rendered the right to sue a potentially hollow and effective right.

The federal government should understand and learn from the Ontario experience. The right to sue should be clear, certain and predictable. There are many examples of citizen suits that work, particularly in the U.S.⁵³ Hence, while the principle of including the right to sue in a renewed CEPA is strongly supported, the right must be virtually without qualification in order

[included in Appendix A].

⁵² Recommendation 114, see above.

⁵³ For a review of U.S. citizen suits both at the federal and state level, see: Paul Muldoon, Cross Border Litigation (Carswell, 1986).

to make it an effective right.

Recommendations:

35) *Support in principle is given to the government proposal to include a right to sue for violations of CEPA and its regulations. However, the right proposed in the government response is too restrictively qualified. Instead, a variation of section 136(1) could be revised to state:*

(1) Any person may, in any court of competent jurisdiction, bring an action for harm resulting in the environment or to human health arising from a violation of this Act or its regulations, regardless of whether that person has personally suffered loss or damage.

There should be no need to first request an investigation under section 108. This is an unnecessary barrier to access to the courts for public interest litigants.

36) *Only common law defences (i.e., due diligence and statutory authorization) should be applicable in such actions and a provision should be included that would in effect exempt public interest litigants from an adverse cost award.*

37) *Section 136 should also be expanded to allow any person to recover the cost of preventing or remediating environmental damage caused by conduct contrary to CEPA or its regulations.*

Government Response 3.10 - The Right to Prosecute

The government proposal is not to incorporate any additional rights or make any changes to the citizen right to prosecute privately where the Attorney General has not itself prosecuted a violation. There is no mention as to whether the court is authorized to award the private prosecutor any part of the fine.

This is an extremely important issue for public interest groups. This issue, along with appropriate recommendations, are fully discussed in Chapter 5, section 5.3, pertaining to Enforcement provisions of CEPA.

3.4 Environmental and Worker Rights Absent in the Government Response

The government response is silent on a number of environmental and worker rights that were proposed in various submission by the public before the Standing Committee and the supported by recommendations of the Committee itself.

This section will outline these rights. These rights are more fully discussed in the background research documents appended to this submission (Appendix A) and various pages of the Standing Committee's report (see also recommendations 97 and 152 of this brief).

Recommendations:

38) *The Declaration of Public Trust*⁵⁴

CEPA should be amended to declare a public environmental trust regarding land and natural resources over which the federal government has jurisdiction.

The beneficiaries of the trust should be defined as the past, present and future generations of Canadians. Provisions should be included that provide for the enforcement of the trust in appropriate circumstances by the courts upon the application of any resident(s) of Canada, and that in enforcing the trust, the courts have broad authority to impose current and future obligations on governments and persons. The terms of the trust should include references to basic principles such as the precautionary principle and the principle of sustainability.

39) *Request for Review*⁵⁵

CEPA should be amended to grant a member of the public a right to request that the government review an existing policy, statute, regulation or instrument to determine if it adequately protects the environment. The decision whether or not to grant a review should be made on the basis of criteria established in CEPA, and reasons for the decision should be required to be given.

Further, a member of the public should have the right to request a review in relation to substances assessed as "toxic", but for which regulations or other measures have not been promulgated within two years following completion of the toxicity assessment. The request should be granted unless the request is considered frivolous or vexatious.

The Ministers should be required to respond to a request for a review within sixty days.

⁵⁴ See: West Coast Environmental Law Association, "Ensuring Meaningful Public and Worker Involvement in Environmental Protection Under CEPA" September, 1994, pp. 15-16 [See Appendix A].

⁵⁵ West Coast Environmental Law Association, *supra*, p. 20; Standing Committee on Environment and Sustainable Development, recommendation 113, see above.

40) *Notice and Comment*⁵⁶

CEPA should be amended to require public notice and an opportunity to comment on all proposed regulations, environmental quality objectives, guidelines codes of practice, agreements, permits and other instruments under the Act. A minimum of sixty days comment period should be mandated (except in the case of emergencies) and that the Minister be expressly required to consider the comment that were made by the public and provide a written summary outlining how these comments were taken into account.

*Additional Notices of Objections*⁵⁷

41) *CEPA should be amended to allow a notice of objection to be filed by any person with respect to:*

- (a) the addition of substances to the Domestic Substances List (DSL);*
- (b) the removal of substances from the Priority Substances List (PSL) before a determination is made with respect to their toxicity;*
- (c) the waiving of information requirements;*
- (d) the approval with conditions or when prohibitions or conditions regarding substances suspected of being "toxic" are varied or rescinded;*
- (e) the approval of field tests in relation to new substances, particularly those involving open release into the environment; and*
- (f) the issuance of an ocean dumping permit or a variation of its terms and conditions.*

42) *CEPA should be amended to require the Minister of the Environment to establish a Board of Review in the foregoing cases unless the Minister considers that the request for review is frivolous or vexatious.*

43) *Creation of an Environmental Fund*⁵⁸

CEPA should provide the authority to establish an environmental fund to be used for a variety of environmental protection activities, including the provision of financial assistance to groups and individuals under a participant funding program. This fund should be administered by Environment Canada and financed by the penalties, fines,

⁵⁶ West Coast Environmental Law Association, *supra*, p. 20; Standing Committee on Environment and Sustainable Development, recommendation 112, see above.

⁵⁷ Standing Committee on Environmental and Sustainable Development, recommendation 112, see above.

⁵⁸ Standing Committee on Environment and Sustainable Development, recommendation 122, see above.

fees and levies imposed under CEPA, as well as the monetary awards granted under the proposed citizen suit provisions.

44) *Participant Funding*⁵⁹

A participant funding program should be established under CEPA, including provisions for interim funding, with funds coming from the environmental fund. The program would be used to fund public interest participants before boards of review.

*Joint Worker-Management Environment Committees*⁶⁰

45) *CEPA should institute joint environment committees with rights, functions, powers and authority equivalent to those of the joint health and safety committee. Specific environmental powers should include the right to participate in workplace environmental audits, where these are required by federal law or by contract. Joint committees should have the right to participate fully in the development of workplace Pollution Prevention Plans (PPP). Worker members of the committee should have the right to register objections to the PPP to the government.*

46) *Legislation should provide that, where workers and management agree, the joint environment committee may be amalgamated with the joint health and safety committee with an expanded mandate.*

47) *Right to Refuse to Pollute*⁶¹

CEPA should be amended to allow work stoppage when any worker has reason to believe that any polluting activity is contrary to CEPA, and, to the extent possible under federal jurisdiction, to allow work stoppages where workers have reason to believe pollution is illegal, reckless, deliberate or in excess of the norm for the enterprise. Employers should not be permitted to ask other employees to pollute when one employee refuses to do so.

48) *Further Information*⁶²

As a consequential amendment to the reforms proposed for CEPA, there should be

⁵⁹ Standing Committee on Environment and Sustainable Development, recommendation 123, see above.

⁶⁰ West Coast Environmental Law Association, *supra*, p. 22.

⁶¹ West Coast Environmental Law Association, *supra*, p. 23.

⁶² West Coast Environmental Law Association, *supra*, p. 24.

changes to WHMIS legislation and regulations ensuring the addition of environmental information to MSDSs. Trade secrecy claims should not be permissible if a substance is released into the environment. In other cases, trade secrecy should be governed by existing HMIRC process.

3.5 Conclusions

Environmental rights and the principle of public participation are of fundamental importance to Canadians. The government response simply does not address this gap at the federal level. The recommendations articulated above would assist in developing a federal environmental bill of rights for Canada.

CHAPTER 4 - ECOSYSTEM SCIENCE AND NATIONAL NORMS

4.1 Introduction

One of the traditional strengths of the federal government in the field of environmental protection is the capacity and ability of the government to exercise leadership in monitoring, research and development of national norms. This role is essential to further the overall goal of a healthy environment and the protection of human health for all Canadians.

This chapter in the government response essentially reaffirms the federal government's present role, without a strong commitment to strengthening it. Perhaps one of the most important components of this chapter, the enshrining into legislation of the National Pollutant Release Inventory (NPRI) is an important step forward, although there is no commitment to overcome some of the problems with the present NPRI.

4.2 Comments on the Government's Proposals

Government Response 4.1 - Authority to Carry Out Monitoring and Research

The government proposes to better reflect the ecosystem approach in its authority to carry out monitoring and research.

Recommendation:

- 49) *The government response 4.1 should be supported and implemented.*

Government Response 4.2 - Authority to Gather Further Information

The government proposes to give the Minister additional authority to require the submission of information for research and publication.

Recommendation:

- 48) *The government response 4.2 should be supported and implemented. This authority should include the authority to require the submission of information regarding the life-cycle aspects of products and processes, including energy and material use, the use of toxic substances, and emissions to the environment.*

Government Response 4.3 - National Pollutant Release Inventory

The government response proposes to enshrine the NPRI in CEPA. The proposal to enshrine

NPRI in legislation is strongly supported. However, the government proposes to use a multi-stakeholder consultative process for change to NPRI.

There are two issues that are raised by this proposal. First, there are needed reforms to the existing NPRI. Second, although a multi-stakeholder forum to assist in fashioning these changes is important, it must be a forum that has government direction on which reforms to NPRI will be effected.

4.2.1 Changes to NPRI

There currently are serious limitations in the information that dischargers are required to report under the NPRI. Environment Canada has noted two important concerns in a recent report. In that report, it is stated:

as they are currently configured, the NPRI and TRI Inventories collect only a limited amount of information regarding Great Lakes priority substances (e.g., Canada-Ontario Agreement substances). This is due, in part, to the fact that only a subset of these substances are listed under the NPRI and TRI. The other major factor is that many of these priority substances like micropollutants, and therefore the quantities that are manufactured, processed, or otherwise used by industry do not trigger reporting to the NPRI and TRI inventories. Changes to the NPRI and TRI will be required if these inventories are to effectively track emissions of Great Lakes priority substances.⁶³

The primary limitations of the NPRI can be summarized as follows:

- (a) **Thresholds are Too High:** Reporting thresholds for the amount of substance that may be manufactured, processed or otherwise used without reporting releases and transfers are so high that many facilities with these substances do not have to report;
- (b) **Many Substances are Not Included:** Many priority substances of concern for human and wildlife health reasons, such as PCBs, dioxins, pesticides, toxaphene, octachlorostyrene are not on the list of substances that must be reported;
- (c) **No Hazardous Substances Used at a Facility:** The NPRI does not include reporting of amounts of hazardous substances used at a facility. This information would assist pollution prevention initiatives and encourage and track progress on reducing the use and production of hazardous substances. It is also essential for addressing accident prevention, and occupational health problems that may arise in the workplace where

⁶³ Environment Canada, Industrial Releases within the Great Lakes Basin: An Evaluation of NPRI and TRI Data (1996), p. 38.

these substances are used.

- (d) **The Definition of Transfer:** The definition does not include hazardous materials transferred to consumers in product. This information is essential because these hazardous materials will eventually be released into the environment either when they are used or when they are disposed of.
- (e) **Off-Site Recycling:** Polluters are not required to report on materials transferred off-site for recycling, including energy recovery at facilities such as cement kilns. This category is listed on the NPRI form, but reporting is voluntary.

These and other concerns are articulated in a document entitled: National Pollutant Release Inventory Citizens' Caucus, Recommendations in Brief to the Minister of the Environment. This document is attached to this submission as Appendix I.

Recommendation:

- 51) *It is recommended that the NPRI be reformed in a number of areas, including lowering the thresholds, including more substances, inclusions of amounts of hazardous waste used at a facility, defining the term "transfer" to include materials transferred to consumers in product, and requiring that facilities report materials transferred off-site for recycling.*

4.2.2 Process for Determining Contents of NPRI

The government proposes to "use a multi stakeholder consultative process for changes to NPRI." While consultation is a laudable principle, it is incumbent on government to take action, even if industry does not agree with it. Up to this point in time, the government has only been willing to implement NPRI where industry has agreed to it. After the last consultation process on the NPRI, the government acted only on those items that all members at the table had agreed to and set the outstanding issues aside.⁶⁴

Industry representatives in the consultation objected to the inclusion of transfers of materials off-site for recycling. As a result, in the second year of reporting under the NPRI, the government moved reporting on transfers of materials for recycling from a required category to a voluntary category because objections from industry. This omission undermines the effectiveness of NPRI and meaningfulness of data. In effect, it would mean intermedia transfers of pollutants not fully tracked by NPRI.

⁶⁴ Letter to Paul Orum from Francois Lavallee, Environment Canada, dated February 20, 1996.

Recommendation:

- 52) *While supporting a multi-stakeholder process to give advice to the government, the government must implement changes to the NPRI. Strong federal leadership is needed as well as strong commitment to the principles that underlie the NPRI. The federal government must act upon these principles even if there is not a full consensus by industry with respect to the needed reforms. The government has a responsibility to protect the environment and should do what is required to do to fulfill this obligation.*

Government Responses 4.4 to 4.6 - Requests for Confidentiality

The government proposes to allow industry to request confidentiality of information based on explicit criteria.

The current regime for confidentiality in CEPA as applied to the NPRI is totally inadequate. Taken literally, all facilities could claim confidentiality for all information with respect to the NPRI.

The use of confidentiality provisions under NPRI should be such that it is used only in exceptional circumstances. The regime proposed in the government response has the potential to make any information at all qualify for confidentiality requests, which defeats the purpose of the NPRI. The solution to this problem is to set firm criteria for confidentiality requests and firm guidelines for how the requests should be evaluated. A full discussion of the recommended criteria and guidelines is set out in this document in Recommendations 97 and 152, below.

Recommendation:

- 53) *Confidentiality requests in relation to NPRI data should be based on the narrow criteria of "trade secrets." Such requests should be granted only under exceptional circumstances. (See recommendation 97 (iii) for a more detailed discussion of the issue of confidentiality).*

Additional principles and recommendations in this regard are provided in Recommendation 97 which are applicable to NPRI.

4.2.3 National Norms

Government Responses 4.7 and 4.8 - Retention of the Obligation

The government proposes to develop national norms, and include in those norms the concepts of pollution prevention and an ecosystem approach. However, government response 4.7 states

that a new paragraph would read "the prevention of pollution, recycling, reusing, treating, storing, or disposing of substances, or reducing releases."

As it will be discussed in Chapter 6 of this submission, pollution prevention has a very specific definition that focuses on process change and rejects pollution control techniques -- techniques currently contemplated within the government response. Government response 4.7 should ensure that the term pollution prevention is defined in the appropriate manner.

Recommendation:

- 54) *Government responses 4.7 and 4.8 are supported, except that the term pollution prevention should be appropriately defined as per Recommendation 2 of this brief.*

4.3 Conclusions

As noted above, one of the key components for a federal environmental protection strategy must be leadership in research, science and information. The NPRI is an excellent example of where the federal government can make an invaluable contribution by giving vital information to Canadians regarding the discharge of pollutants into the environment and in what amounts. However, to further this end, the NPRI must be significantly improved in accordance with the recommendations outlined above.

CHAPTER 5 - ENFORCEMENT

5.1 Introduction

The Standing Committee made recommendations to enhance the right of citizens to undertake private prosecutions and also recommended restructuring Environment Canada to promote its enforcement role. Unfortunately, the government proposal does not accept these key recommendations. The government proposal did, however, adopt the Standing Committee's recommendations with respect to alternative enforcement options and additional enforcement powers for CEPA officials. Although these recommendations will strengthen the enforcement framework of CEPA, these amendments alone will not improve enforcement activity.

5.2 Comments on the Government's Proposals

Government Responses 5.1 to 5.3 - Administrative Monetary Penalties (AMPs)

The government proposal recommends the imposition of administrative monetary penalties (AMPs) for a violation which would be determined through an administrative process. AMPs in essence are penalties imposed as a consequence of a failure to comply with a legal requirement. AMPs gives the person a chance to appeal the administrative penalty, but the appeal takes place usually before an impartial government official who did not participate in the decision or before an administrative tribunal. AMPs would be an alternative to prosecution and would be used for offences for which no term of imprisonment would be sought as a penalty.

In addition, the government proposal also recommended that a provision be created in CEPA enabling the government to prosecute AMPs through the courts if the government so chooses. Situations where this may be desirable would be when the offender's conduct demonstrates a disregard for the law or if the individual is a repeat offender. The government response also provides for a number of methods to enforce AMPs ranging from registration in court to possible withholding of refunds of federal taxes.

The advantage of AMPs is that it is more expeditious and requires less government resources than undertaking a prosecution. However, there is a risk the government may overly rely on AMPs to address violations under CEPA because it is a less resource intensive scheme. Therefore, it is recommended the government establish clear guidelines outlining the criteria to determine when the use of AMPs would be appropriate.

Overall the proposal to create an AMP scheme and to enforce it is supported.

Recommendation:

55) *The creation of an administrative monetary penalty scheme and the proposal to*

prosecute AMPs in court and ensure enforcement of AMPs is supported. However:

- (a) there should be guidelines in place providing government officials with guidance in determining whether the use of AMPs is appropriate to address a violation; and*
- (b) AMPs should not be used for:*
 - * serious offences, which carry a threat of imprisonment;*
 - * where the violation has posed a significant risk or will have serious adverse effects on the environment;*
 - * where the offence has been deliberate; or*
 - * where the violation has been repeated.*

Government Responses 5.4 and 5.5 - Negotiated Settlements

The government proposal recommends the use of negotiated settlements to increase compliance and to decrease reliance on prosecutions. Negotiated settlements are made after the regulatee is found to have broken the law and instead of proceeding with a prosecution, the regulator negotiates with the regulatee to identify steps the regulatee will take to ensure that another violation will not occur. The government proposal recommends that negotiated settlements would be in addition to any AMPs imposed for violation or could replace the payment of an administrative penalty. In addition, the government proposal also proposes to examine options for the most effective ways to ensure enforcement of negotiated settlements.

Recommendation:

- 56) A provision in CEPA allowing the use negotiated settlement is supported provided it will not be used in lieu of prosecution, but will only be utilized as an addition to any AMPs imposed or to replace the payment of a monetary penalty.*

Government Response 5.6 - Ticketing

The Standing Committee recommended ticketing as a enforcement option. Furthermore, the Standing Committee recommended that the Department of Justice also give priority status to the proclamation of the Contravention Act to expedite the ticketing provisions under section 134 of CEPA. The Act is intended to set up a general ticketing framework for federal regulatory offences and would use the ticketing systems in the provinces and the territories to process tickets issued under the Act. However, the Act which was passed over two years ago has not yet been proclaimed.

Therefore, the government proposal considered it prudent to retain authority in CEPA to make regulations designating CEPA offences, which can be punishable by tickets and to establish

finer for these offence. Consequently, the government proposal recommended removing the application of the Contravention Act to CEPA.

Recommendation:

- 57) *The proposal to create the authority under CEPA to make ticketing regulations for offences and establishing fines for these offences is fully supported.*

Government Response 5.7 - Cease and Desist Orders

The Standing Committee recommended CEPA inspectors' powers be expanded to issue cease and desist or stop orders to halt any activity in contravention of the Act or the regulations in circumstance where it is necessary to prevent or contain any danger or threatened danger to human health or to the environment. The Standing Committee restricted the right to use cease and desist orders to these specific circumstances as there are other means in the Act to address other violations.

The government proposed CEPA be amended to provide for the use of cease and desist orders; however, no restriction was placed on the conditions under which CEPA inspectors could utilize this power.

Without any limitation, there is potential for CEPA inspectors to rely on their cease and desist powers to address all types of violations under the Act or regulations thereby avoiding other enforcement actions such as prosecution. This is a matter of concern because the Department of Environment has had an historical emphasis on abatement as opposed to enforcement actions. Therefore, there should be written guidelines outlining the circumstances when a cease and desist order may be utilized.

Recommendation:

- 58) *It is recommended that the CEPA inspector only use a cease and desist order to prevent or contain danger or threatened danger to human health or to the environment.*
- 59) *It is also recommended that legislation should specify the circumstances under which cease and desist orders may be issued, and that guidelines should be drafted to assist CEPA inspectors in determining when circumstances warrant a cease and desist order.*

Government Responses 5.8 to 5.10 - CEPA Inspectors, CEPA Investigators and CEPA Analysts

The Standing Committee recommended that the existing powers of inspectors to take or order

preventative or remedial releases under section 36 and 37 be extended to all relevant parts of CEPA including any new parts which may be added under the Act. Furthermore, it was also recommended that the related provisions respecting access to property to be extended to all relevant parts of the Act and that a person against whom a preventive or remedial order is issued be required to report on the measures taken to comply with the order.

The government proposal accepted the Standing Committee recommendations to correct the anomalies, inconsistencies and omissions in the inspectors' powers.

With respect to the investigators' powers, the Standing Committee noted that the powers available were insufficient for the job. It recommended that CEPA be amended to provide CEPA investigators with the powers of a peace officer. The powers of peace officers include the power to deliver notices for court appearances, summonses and similar documents, the power to secure a warrant by telephone and a limited use of force such as authority to break locks on doors and filing cabinets during the execution of a search warrant. The inclusion of these powers would serve to distinguish the inspection and investigation roles for CEPA officers and would also enhance efficiency and facilitate enforcement.

The government proposal in accordance with the Standing Committee's recommendation proposed the creation of a new category of officer called the investigator, who would have all the powers of an inspector and would also have certain powers similar to a peace officer.

The Standing Committee recommended that official analysts be granted powers to enter premises under section 100(1) and the powers to open and examine receptacles and packages, take samples and measurements and conduct tests under section 100(5). The purpose of such a provision is to allow official analysts to assist inspectors in exercising their duties under the Act. For example, a regulated party is required to conduct compliance tests under the supervision of an inspector. The supervising inspector, however does not always have the specialized knowledge of an official analyst and cannot ensure the testing is done properly.

The government proposal recommended CEPA be amended to allow CEPA analysts to accompany inspectors, and when accompanying inspectors, to enter premises, to open and examine receptacles and packages, and take samples and measurements and to conduct tests.

Recommendation:

- 60) *The recommendation to broaden the powers of CEPA inspectors, investigators and CEPA analysts be expanded as outlined in the government proposals 5.8-5.10 is fully supported.*

Government Response 5.11 - The Need for Classification

The Standing Committee recommended the classification of offences under the Act to provide

the courts with some guidance about the seriousness of offenses. This proposal was accepted in the government proposal for two reasons, namely that it would assist the courts in determining the seriousness of the offence and it would also be necessary for use of AMPs.

Recommendation:

- 61) *The recommendation to amend CEPA to provide for classification of offenses to provide guidance to the courts as well as the use of AMPs is supported.*

Government Responses 5.12 to 5.14 - Guidelines for Sentencing and Court Orders

The Standing Committee recommended that CEPA be amended to enable courts to recover the costs incurred in the investigation and prosecution of offences under the Act, require administrative and monetary penalties collected under the Act be placed either in whole or in part, in an environmental fund, provide sentencing guidelines for the court's consideration and Environment Canada to continue to sensitize the judiciary to the gravity of environmental offences.

The government response accepted the Standing Committee's recommendation to broaden the discretion under CEPA to impose court orders for payment of fines to an environment groups or for research and to require the offender to publish an apology for the offence. The government response also accepted the recommendation for CEPA to be amended to provide sentencing guidelines for the court's consideration.

Recommendation:

- 62) *The government proposal recommending amendments to CEPA to broaden the types of orders which may be issued by the courts and providing for sentencing guidelines is fully supported.*

5.3 Weakness in the Existing Enforcement Provisions

5.3.1 Government Response - The Right to Prosecute

The government proposal did not accept any of the Standing Committee's recommendations regarding measures to strengthen the role of private prosecutions under CEPA, such as allowing citizens to remain a party in the event the Attorney General intervenes in a private prosecution and a provision allowing a recovery of costs for investigating and prosecuting a private prosecution.

The Right of Citizens to Prosecute

A citizen's right to pursue a private prosecution is a fundamental part of our criminal justice system, which goes back to the earliest days of our legal system, and is now codified in the Criminal Code.⁶⁵ Because citizens are committed to values enshrined in environmental laws, they are more likely to be inspired to launch a private prosecution for offenses against the environment.⁶⁶ Private prosecutions have, therefore, played an important role in the context of environmental protection. Indeed, some of the most significant environmental cases began as private prosecutions.⁶⁷ A study done by the Law Reform Commission of Canada concluded that "a criminal justice system that makes full provision of private prosecution of criminal and quasi-criminal offenses has advantages over one that does not. In any system of law, particularly one dealing with crimes, it is of fundamental importance to involve the citizen positively. The opportunity of a citizen to take his case before a court, especially where a public official has declined to take up the matter is one way of ensuring such participation."⁶⁸

The right to launch a private prosecution has also provided an important safeguard against government laxity and inaction. This safeguard is particularly relevant in view of the federal government's weak enforcement record under CEPA. Consequently, there is a compelling need to strengthen the role of private prosecution. However, a citizen's right to commence a private prosecution should be not regarded as a replacement for government inaction under CEPA. Compared to the average citizen, the federal government has enormous resources and expertise to investigate and prosecute offenses. The government also has a mandate to do so. The role of private prosecutions should be regarded, at most, as a necessary safeguard against government's unwillingness to prosecute.

Attorney General's Powers to Intervene

The Attorney General's power to intervene in a private prosecution is regarded as necessary to prevent abusive private prosecution by citizens.⁶⁹ However, if this discretion is not circumscribed by legislation and guidelines, this broad discretionary power may be subject to

⁶⁵ *Gouriet v. Union of Post Office Workers* (1974), A.C. 435 p. 79.

⁶⁶ Private Prosecutions, Working Paper 52, (Ottawa: Law Reform Commission of Canada, 1986).

⁶⁷ *R.v. Sault Ste. Marie*, [1978] 1 S.C.R. 1299.

⁶⁸ *Supra*, note 2, p. 3.

⁶⁹ Linda F. Duncan, Enforcing Environmental Law: A Guide to Private Prosecution, (Alberta: Environmental Law Centre, 1990) at p. 35.

abuse.

The experience of private informants in both British Columbia and Alberta is that regardless of the strength of the evidence collected by private informants or their agents, the Crown has intervened to stay the proceedings.⁷⁰ For example, the Sierra Legal Defence Fund, an environmental public interest group, has initiated a number of prosecutions which have been stayed by the Provincial Attorney General. The most recent case involved a private prosecution against the Greater Vancouver Regional District for offenses relating to sewage discharge. The Attorney General's office took over the case, had it adjourned fourteen times over two years, admitted that the evidence was "impeccable" and then stayed the charges on grounds that a "handshake agreement" between the province and the municipality allowed excessive sewage discharges in certain circumstances.

British Columbia and Alberta's record on private prosecutions raises serious concerns about the potential for the Attorney General or his agents to abuse their intervention powers. According to the government response, the "official policy" of the Federal Attorney General is to intervene only when there is insufficient evidence to sustain a charge or it is not in the public interest to prosecute. The ambit of staying charges under "public interest" is, however, extraordinarily broad and given the reluctance of courts to review the Attorney General's decision to stay proceedings, the potential for abuse remains. There is no valid policy reason why the only protection against an abuse should depend upon the public's reliance of exemplary conduct by the Attorney General. Instead, protection should be afforded to the public by legislative enactments and specific guidelines outlining the circumstances which warrant intervention. Without such protection, citizens will be reluctant to expend considerable effort and money necessary to initiate a private prosecution.⁷¹

Section 2(d) and 2(e) of CEPA, respectively, requires the federal government to encourage the participation of Canadians in making decisions that affect the environment and protecting the environment. Unlike other federal statutes, there is an explicit recognition in CEPA that citizens have an essential role to play in upholding the Act. The enforcement provision in CEPA should therefore, be amended to reflect these principles.

Recommendation:

- 63) *It is recommended that CEPA be amended to specify the following conditions:*
- a) *stipulate the circumstances when the Attorney General will intervene in a private prosecution. In addition, guidelines should be enacted specifying the factors which warrant intervention. These factors should*

⁷⁰ Ibid. p. 38.

⁷¹ ⁷¹ Sierra Legal Defence Fund, Newsletter No. 11, October 1995.

be balanced with sections 2(d) and 2(e) of CEPA;

- b) allow for the citizens to remain a party to a prosecution should the Attorney General decide to intervene in a private prosecution; and*
- c) permit citizens to take part in plea negotiations and make submissions in court on sentencing in a private prosecution.*

Private Prosecutions - Costs

The costs of commencing a private prosecution can be considerable, and thus be a disincentive to citizens to enforce CEPA. Many environmental groups recommended to the Standing Committee that the private prosecution provisions of CEPA be strengthened by enacting a provision permitting the recovery of costs. The Standing Committee addressed their concerns by recommending that the courts be empowered to order the recovery of costs incurred in the investigation and prosecution of offenses under the Act. The inclusion of such a provision would provide a considerable incentive in encouraging citizens to play a role in the enforcement of CEPA.

Recommendation:

- 64) It is recommended CEPA be amended to provide the court with the power to order the recovery of costs incurred in the investigation and prosecution of offences under the Act by private citizens.*

5.3.2 Restructuring Environment Canada

The Standing Committee recognized that a credible and effective enforcement programme could only be established if Environment Canada underwent substantial restructuring and created a special prosecution team, separate from its abatement role.

The Standing Committee recommended Environment Canada revise its enforcement approach to CEPA. In particular, the Standing Committee recommended that Environment Canada establish an independent enforcement office with regional branches, revise CEPA's Enforcement and Compliance Policy, ensure that enforcement decisions are made with reference to the policy by lawyers within Environment Canada, establish training programmes for enforcement personnel, keep information of enforcement actions in a centralized data bank and set up a legal branch within Environment Canada to prosecute offences under CEPA. Following these measures will help develop within Environment Canada the expertise and experience of its legal counsel. It should be noted that these recommendations have been applied in jurisdictions such as Ontario and proven extremely effective.

Recommendation:

- 65) *It is recommended that Department of Environment Canada should be restructured in order to operationalize its regulatory mandate in accordance with the recommendations made by the Standing Committee. In particular:*
- a) an independent enforcement office with regional branches should be established within Environment Canada, that would report directly to the Minister of Environment or Deputy Minister;*
 - b) The CEPA Enforcement and Compliance Policy be revised and updated and procedures be established to ensure that enforcement decisions are made with reference to the policy. Training programmes for enforcement personnel should be provided where needed and a summary of all enforcement actions should be prepared and made available on a centralized databank;*
 - c) Permanent objectives be set and methods for evaluating effectiveness of enforcement actions should be developed;*
 - d) Information on enforcement actions should be provided in a consistent and detailed manner on an electronic public registry and a separate publication on enforcement actions be prepared annually and tabled in Parliament;*
 - e) The decision to undertake a prosecution be approved by the lawyers assigned to Environment Canada and not any other officials within the Department of Justice; and*
 - f) All important CEPA cases, with significant legal and/ or environmental implications should be assigned to senior prosecutors who have both expertise in both litigation and environmental law.*

5.4 Conclusions

The government proposals will enhance the enforcement framework of CEPA. However, they will not necessarily lead to an increase in enforcement activity. The enforcement practices of Environment Canada must undergo substantial reform if there is to be any improvement in the enforcement of CEPA. In particular, the Department must shift its focus from that of an advisory and promotional role and be willing to make a greater use of prosecutions to ensure regulatory compliance with the Act. In view of the government's laxity in enforcing CEPA, there is also a need to strengthen the role of private prosecution to supplement the federal role in enforcement.

CHAPTER 6 - POLLUTION PREVENTION

6.1 Introduction

Pollution prevention is one of the most important legislative concepts for the 1990s and beyond. Although there are some positive proposals in the government response, the proposed reforms to CEPA will not create a comprehensive pollution prevention regime for Canada. The proposed reforms are incomplete and insufficient to assist Canada in catching-up with other countries that have focussed on clean production and pollution prevention.

In particular, it is disappointing that the pollution prevention principle has not been engaged throughout CEPA and in particular, not put into practice in Part II of the Act. Some constructive suggestions on how to implement pollution prevention in CEPA were submitted to the Standing Committee on Environment and Sustainable Development and reference should be made to that document,⁷² an overview of which is presented below.

Further, it seems apparent that the pollution prevention provisions must be enhanced to ensure that the renewed CEPA is consistent with the Liberal commitments to pollution prevention as articulated in the document, Creating Opportunity. That document stated that:

"In the past, environmental policy has focused on managing and controlling the release of pollutants entering the environment. This approach has had only limited success. Canada needs a new approach that focuses on preventing pollution at source. ... Manufacturing innovations are needed to avoid the use or creation of pollutants in the first place; for example, through raw material substitution or closed-loop processes that recycle chemicals within the plant. There is no alternative if Canadians wish to stop long-term toxic pollutants from entering our air, soil, and water. A Liberal government will use the upcoming five-year review of the Canadian Environmental Protection Act to make pollution prevention a national goal and to strengthen the enforcement of federal pollution standards."⁷³

Before comment can be made on the government proposals, some general recommendations are first in order. It should be apparent, however, that if the Government of Canada is serious about pollution prevention, there should be a comprehensive re-examination of the way pollution prevention is being implemented under the federal authority.

⁷² Canadian Environmental Law Association, Incorporating Pollution Prevention into Part II of CEPA: An Agenda for Reform (September, 1994). A copy of this paper is included in Appendix A of this submission.

⁷³ Creating Opportunity: The Liberal Plan for Canada, p. 66.

6.2 Overriding Considerations

6.2.1 Pollution Prevention as a National Priority

When CEPA was drafted in 1988, it was argued that it should be based on pollution prevention. The message was not heard then. That the government now accepts pollution prevention as a guiding principle (Government Response 1.2) is a positive step, as is the government's statement committing Canada to the pollution prevention approach.⁷⁴ Attention should be drawn to the fact that the national pollution prevention policy for Canada is not only an environmental policy, but an industrial policy as well. At the Environmental Crossroads (see Appendix D) describes pollution prevention's fundamental assumption: it applies everywhere, to all things, at all times. Pollution prevention is an attitude, not a point solution. As such, it should be the intention of the federal government to commit all departments to this approach and the goals set under it, and then conduct their activities accordingly.

Further, it is appropriate, as proposed in government response 1.2, that the term pollution prevention be defined. The proposal to define pollution prevention in legislation in the document: Pollution Prevention: A Federal Strategy for Action is supported, subject to the comments made in a submission on the issue endorsed by some 11 environmental and labour groups.⁷⁵ A copy of this submission is included in Appendix H to this submission.

Recommendation:

- 66) *CEPA should be amended to include a statement of purpose to the effect that the government of Canada declares it to be the national policy of Canada that the use, generation and release of pollutants should be prevented in order to protect the health and well-being of Canada and the environment. The government of Canada should develop policies, undertake programs and cooperate with other jurisdictions to effect this declaration.*

6.2.2 Definition of Pollution Prevention Scope of Measures

One of the most important issues with respect to pollution prevention is whether a "pure" approach is taken to include in the definition only those measures that avoid the creation of

⁷⁴ Government of Canada, Pollution Prevention: A Federal Strategy for Action, June, 1995.

⁷⁵ A Response to Pollution Prevention: Towards a Federal Strategy for Action - Consultation Document, Submitted to Environment Canada, May, 1995. This document is appended to this submission as Appendix G.

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Before comment can be made on the government proposals, some general recommendations are first in order. It should be apparent, however, that if the Government of Canada is serious about pollution prevention, there should be a comprehensive re-examination of the way pollution prevention is being implemented under the federal authority.

⁷² Canadian Environmental Law Association, Incorporating Pollution Prevention into Part II of CEPA: An Agenda for Reform (September, 1994). A copy of this paper is included in Appendix A of this submission.

⁷³ Creating Opportunity: The Liberal Plan for Canada, p. 66.

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One of the most important issues with respect to pollution prevention is whether a "pure" approach is taken to include in the definition only those measures that avoid the creation of

⁷⁴ Government of Canada, Pollution Prevention: A Federal Strategy for Action, June, 1995.

⁷⁵ A Response to Pollution Prevention: Towards a Federal Strategy for Action - Consultation Document, Submitted to Environment Canada, May, 1995. This document is appended to this submission as Appendix G.

pollution; or any measure, including pollution control measures, that seek to reduce pollution entering the environment. It is submitted that the former approach is the appropriate one; the latter simply reinforces and legitimizes the status quo.

Focus Must be on Use and Generation, Not Emissions

The focus of some definitions of pollution prevention is on the "release to the natural environment" of substances. This focus excludes the option of examining the use of chemicals and implies that industrial process change, product reformulation and substitution measures are not part of the definition. The most effective way of dealing with discharges to the environment is by moving up the pipe to examine ways to rethink the industrial process. Sometimes this requires an examination of feedstock chemicals and raw products. A definition that focuses on "release to natural environment" pre-empts such examinations.

Focus Should be on Use and Generation, Whether in the Workplace or the Environment

Some definitions of pollution prevention focus on emissions to the "natural environment" and are meant to exclude workplace issues. Pollution prevention is fundamentally important to worker safety and in-house pollution issues and as such, must be broad enough to encompass the workplace.

Out-of-Process Recycling Process is not Part of Pollution Prevention

Some definitions of pollution prevention include practices such as one facilities' waste being used as a feedstock by another facility. Similarly, these definitions allow for facilities' waste to be used for out-of-process recycling. However, including these practices in the definition of pollution prevention would, by implication, also permit measures such as: incineration, and on-site disposal, among others. An appropriate definition of pollution prevention should not include out-of-process recycling of substances. This issue is fully discussed in the report by the Pollution Prevention Legislative Task Force.⁷⁶

Recommendation:

- 67) *CEPA should define pollution prevention as per recommendation 2) of this brief. The definition should focus on the "use" of substances, including those used in the workplace. Out-of-process recycling process should not be included in the definition of pollution prevention.*

⁷⁶ Pollution Prevention Legislative Task Force, Final Report, September, 1993, p. 21.

6.3 Comments on the Government's Proposals

Government Response 6.1 - Pollution Prevention Plans

The government proposes to give the Minister authority to require the preparation and implementation of pollution prevention plans for toxic substances. While this proposal is supported, it must go further in pollution prevention planning.

First, pollution prevention plans should be required for all substances that have been identified on a list promulgated pursuant to a regulation. This list would include all NPRI substances, CEPA toxic substances, and other substances where elimination or reduction is preferable. There is clear authority in CEPA's information gathering provisions to require the submission of such information.

Second, the government proposal only gives the authority to the Minister to impose a pollution prevention planning process. This provision should require a pollution planning regime for certain substances and certainly for any CEPA toxic substance.

Recommendation:

- 68) *Pollution prevention plans should be required for all substances so designated by regulation and these substances would include CEPA toxic substances and NPRI substances. Pollution prevention plans should be mandatory for these substances.*

Government Response 6.2 - Furthering Pollution Prevention Plans

The government proposes to specify through the Canada Gazette some implementing measures concerning pollution prevention plans. This proposal is supported generally. However, it should be noted that if the above recommendation is accepted, that is, that pollution prevention planning is required for designated substances, the regime does far less complex and more certain in terms of who is required to undertake the plan and what substances are included.

Further, the pollution prevention plan, as suggested in the commentary to government proposal 6.2, should not focus on "control and treatment" and "safe disposal" since these are not pollution prevention techniques and are not included in the definition noted above.

Recommendation:

- 69) *Pollution prevention plans should not focus on "control and treatment" and "safe disposal" as these are not appropriate pollution prevention techniques.*

Government Response 6.3 - Pollution Prevention Plans for Infractions of CEPA

The government proposes that the Minister should be able to require preparation and implementation of pollution prevention plans where there is an infraction of CEPA, one of its regulations or where there is a finding of liability under the administrative monetary penalty system.

In the U.S., where there is mandated pollution prevention planning under state law, the result has been very positive economic and environmental effects from the perspectives of affected firms.

Consequently, pollution prevention planning, as a planning regime, should not be limited to "bad actors." It should be used as a positive measure in the move toward cleaner technology. In this context,

Recommendation:

- 70) *CEPA should be amended to permit the courts to require pollution prevention planning activities beyond those proposed in Recommendation 68, as a sentencing or settlement option in the adjudicatory process.*

Government Response 6.4 - Model Pollution Prevention Plans

The government proposal to develop model pollution prevention plans is supportable. However the list of components given is incomplete and should include various components that are required in other jurisdictions.⁷⁷ These are not onerous but would assist the facility in furthering pollution prevention objectives.

Recommendation:

- 71) *Model pollution prevention plans should be comprehensive in nature and include;*
- * a definition of their own production units and processes;*
 - * the development of process flow diagrams and material balances that described the operations (a material balance requires that raw materials be tracked from process input to process output);*
 - * a calculation of the cost of using substances by production unit;*
 - * the development of options to avoid the use and generation of the substances;*
 - and*
 - * the development of time lines to implement those options.*

⁷⁷ See: General Accounting Office, Pollution Prevention: EPA Should Reexamine the Objectives and Sustainability of State Programs (January, 1994), p. 19.

Government Responses 6.5 and 6.6 - Submission of Pollution Prevention Plans

The government proposes to require the submission of a declaration that a pollution prevention plan has been prepared and to create an offence for non-production of the declaration. Additional information gathering powers would also be given to the Minister.

These provisions need to be strengthened. First, a summary of the plan must be submitted to the Minister, and should also be available for public review. The summary would essentially review whether the pollution prevention planning requirements had been fulfilled.

Second, there is need for an institutional framework to have these plans reviewed by qualified personnel. Hence, there should be a system to certify pollution prevention planners. These planners would be certified through specialized courses at designated universities. There should also be formal recognition of the National Office of Pollution Prevention.

Finally, provision should be made to give the Minister the authority, in some circumstances, to require the implementation of the plans.

Recommendations:

- 72) *Those preparing pollution prevention plans should have to submit summaries of those plans to Environment Canada. Further, there should be provision to have these summaries available to the public for review and comment.*
- 73) *Provisions should be made such that, in appropriate circumstances, the federal government can require the implementation of the plan.*
- 74) *The National Office of Pollution Prevention should be made inter-departmental in nature and should be given a statutory basis.*
- 75) *The pollution prevention plans submitted by industry should be certified by experts in the field. These experts should have to undergo training at Pollution Prevention Institutes established at universities throughout Canada.*

Government Response 6.7 - Tracking Pollution Prevention

The government proposes to revise the National Pollutant Release Inventory to provide a means for industry to report on pollution prevention activities. This proposal is supportable, however, the tracking proposal should be mandatory.

Recommendation:

- 76) *The National Pollution Release Inventory should require that the industry report on*

pollution prevention activities.

Government Response 6.8 - Targets and Schedules

The government proposal to include targets such as those set out by the Business Council for Sustainable Development is inappropriate and should be rejected. The controlling targets should be those that Canada has already agreed to in the international fora, and strong goals that are both practical and feasible. One goal, for example, should be the virtual elimination of persistent toxic substances as stated under the Great Lakes Water Quality Agreement.

Recommendations:

- 77) *The government of Canada has committed itself to virtually eliminate the use, generation and discharge of persistent toxic substances no later than 2004 and to reduce the use, generation and release of other toxic substance by 50% by the year 1999.*
- 78) *It is recommended that, as part of the pollution prevention regime, there be requirements for the setting of sectoral and facility based goals and targets to meet the national goals and to adjudge progress generally.*

Government Response 6.9 - Technology Development and Transfer

The government response to promote technology development and transfer with respect to pollution prevention is supported.

Recommendation:

- 79) *Government response 6.9 is supported and should be implemented.*

Government Response 6.10 - Pollution Prevention Clearinghouse

The government proposal to establish a clearinghouse on pollution prevention is supported.

Recommendation:

- 80) *Government response 6.10 is supported and should be implemented.*

Government Response 6.11 - Recognition and Awards

The government response to establish award programs for pollution prevention is laudable, but such programs do not need to be established in the context of legislative reform to CEPA.

Recommendation:

- 81) *While the principle in government response 6.11 is supportable, there is no need to amend CEPA to establish awards programs for pollution prevention.*

6.4 Other Measures to Further Pollution Prevention Not in the Government Response

There are a number of initiatives that should be incorporated into CEPA that are not mentioned in the government response. These include technical and financial programs. Further, the above programs and activities seek to encourage pollution prevention. However, there are also measures that should be incorporated that are more regulatory in nature. The following programs are recommended:

Recommendations:

- 82) *The federal government should facilitate pollution prevention through a capital loan program. This program would only support pollution prevention initiatives and would be carefully monitored as such.*
- 83) *The federal government should undertake a study examining all barriers, including a study of the Income Tax Act to ensure that provisions encourage pollution prevention.*
- 84) *Pollution Prevention and Federal Approvals: The federal government gives a number of environmental approvals. These approvals should be undertaken in light of the pollution prevention regime proposed above.*
- 85) *Other Powers for CEPA - Reforming section 34: There are many other programs and activities that would assist in the furtherance of the pollution prevention regime. Hence, it is important that CEPA be amended to ensure that the Minister has broad powers to undertake such measures. These measures might include:*
- * amendments to section 8 that would direct the Minister to formulate environmental objectives, codes of practice and guidelines to further pollution prevention goals;⁷⁸ and*

⁷⁸ See: Hajo Versteeg, Examining the Current and Proposed Potential of the Canadian Environmental Protection Act to Incorporate Pollution Prevention Principles and Strategies (A

- * *amendments to section 34 to provide for the requirement of pollution prevention plans along with other measures, including:*
 - * *the power to prohibit the sale and manufacture of specific products; and*
 - * *the power to require product substitution.*

6.5 Environmental Aspects of Emergencies

Government Response 6.12 - Prevention, Preparedness, Response and Recovery Framework

The government proposes to amend CEPA to include new provisions to enable the Minister to establish a legislative framework for environmental emergencies.

This is a constructive proposal, however, there is need for more specificity in terms of the content of this legislative framework. This framework should include the development of emergency response plans and the reduction of hazardous chemicals stored on site.

Recommendation:

- 86) *The proposal for a new legislative framework for environmental emergencies is supported. This framework should include:*
- (a) *the requirement for Environment Canada to identify a list of chemicals which have the potential to cause serious accidents and then identify their appropriate threshold quantities. For those substances over the threshold, the facilities should report the maximum and average quantities on site. This information should be public;*
 - (b) *All facilities which meet the threshold limits, including those owned operated by the federal government, should prepare reduction measures and emergency preparedness plans; and*
 - (c) *CEPA should mandate the federal government to work with the provinces and, if necessary, to act unilaterally, to prepare mandatory emergency planning requirements for all industries.*

Government Response 6.13 - Standards, Guidelines and Codes of Practice

The authority for the Minister to develop and or adopt appropriate standards, guidelines and codes of practice is proposed to be included in the Act.

Recommendation:

87) *Government proposal 6.13 is supported and should be implemented.*

Government Response 6.14 - MIACC

The government proposes to work with MIACC and other organizations in the development of standards, guidelines and codes of practice related to environmental emergencies.

Recommendation:

88) *While support should be given for proposal 6.14, there should also be consultation with regional and local community groups interested in the issue.*

Government Response 6.15 - The "Federal House"

The government proposes to vest additional authority with the Minister to address federal house issues and environmental emergencies.

Recommendation:

89) *Government proposal 6.15 is supported and should be implemented.*

Government Response 6.16 - Site Identification and Registration

The government proposes to explore a system of identifying sites containing quantities of hazardous materials in excess of specified thresholds.

Recommendation:

90) *Government proposal 6.16 is supported. However, the proposal should be made mandatory, not optional.*

Government Response 6.17 - Reporting of Spills, Leaks and Other Such Incidents

The government proposes to continued discussions to explore a national spill reporting network.

Recommendation:

- 91) *The idea of a national spill reporting network is supported. The federal government should facilitate the development of this network so that it may be operational within one year.*

Government Response 6.18 - Recovery of Costs of Damages

The federal government proposes to expand cost recovery provisions.

Recommendation:

- 92) *The proposal to expand cost recovery provisions related emergency preparedness is supported.*

6.6 Conclusions

Pollution prevention is one of the foundations for CEPA. Despite the ostensible support for the concept in the government proposal, the practical effect of its acceptance is not significant as presently stated. What is needed is a comprehensive pollution prevention strategy across the entire government. CEPA should be the spark for this review and provide a platform for a focussed strategy for implementation.

CHAPTER 7 - BIOTECHNOLOGY

7.1 Introduction

The Standing Committee recommended major changes to CEPA's treatment of the regulation of products of biotechnology. Partially in response to a proposal made by the Canadian Institute for Environmental Law and Policy (CIELAP),⁷⁹ the Standing Committee recommended that a new biotechnology part for CEPA be established to provide standards and procedures for the assessment of the environmental and human health impacts of biotechnology products (Recommendations 68 and 69). The intention was that this part provide a benchmark for the evaluation of products of biotechnology, including genetically engineered plants, microorganisms, fish, and animals.

Unfortunately, the proposals regarding the regulation of biotechnology contained in the government's response to the House of Commons Standing Committee on Environment and Sustainable Development's report on the Canadian Environmental Protection Act (CEPA)⁸⁰ would significantly weaken the existing regulatory framework for biotechnology products established by the Act. The government's response proposes a biotechnology part in CEPA, but its primary purpose would be to exempt from the requirements of CEPA products which are, or may be, regulated under other acts. The current minimum standard for notification and health and environment assessment of all biotechnology products established by section 26(3)(a) of CEPA would be eliminated.

The "safety net" provided by the current Act would also be weakened. Currently, CEPA applies to a product if a regulation requiring notification and assessment of potential toxicity has not been made under another Act. The government's response would change this to CEPA being applicable only where there is no potential to make a regulation related to biotechnology under another Act.

This proposal cannot be supported. Instead, CEPA should be amended in a manner consistent with the intent of the Standing Committee's recommendations. A new biotechnology part should be established under CEPA which would apply to all products of biotechnology which may enter the environment, including those currently proposed to be regulated under other statutes, such as the Seeds Act, Pest Control Products Act, Fertilizers Act, and Plant

⁷⁹ See: M. Winfield and B. Mausberg, "CEPA, Chemical New Substances, and Biotechnology," in M. Winfield, ed., Reforming the Canadian Environmental Protection Act: A Submission to the Standing Committee on Environment and Sustainable Development (Toronto: Canadian Institute for Environmental Law and Policy, September 1994).

⁸⁰ House of Commons Standing Committee on Environment and Sustainable Development It's About Our Health! Towards Pollution Prevention (Ottawa: House of Commons, June 1995).

Protection Act. This new biotechnology part would establish assessment procedures and criteria for all products of biotechnology, and provide for public participation in decision-making regarding biotechnology products. This issue is discussed more fully below in the section dealing with Government Proposal 7.4.

7.2 The Existing CEPA Biotechnology Provisions

CEPA current only makes reference to biotechnology products in its definitions section and section 32, which provides authority to make a notification regulation for products of biotechnology. In effect, biotechnology products are treated as a category of new substances for the purposes of Part II of the CEPA. Section 26 of CEPA Part II, requires that notice be given to Environment Canada and Health Canada prior to the import, manufacture or sale of a new substance, and that it be assessed for whether the substance is capable for becoming "toxic," as defined for the purposes of CEPA.⁸¹

Conditions or prohibitions on the import, manufacture, use or sale of a new substance may be imposed by the Ministers of Environment and of Health on substances "suspected of being toxic," although prohibitions on manufacturing or importation are limited to not more than two years.⁸² If a new substance is found to be "toxic" for the purposes of CEPA, its import, manufacture, use, or sale may be regulated or prohibited through section 34 of the Act.

One of the most important aspects of the existing structure of CEPA is that it provides that all new substances are subject to pre-manufacturing, import or sale notification and assessment of "toxicity." New substances, including all products of biotechnology, can only be exempted from the requirements of CEPA in this regard if they are regulated under another act of Parliament that provides for notice to be given prior to their manufacture, import or sale, and for an assessment of whether they are "toxic" as defined by CEPA.⁸³ In effect, CEPA is intended to ensure that all substances new to Canada, including products of biotechnology, are subject to notification and assessment requirements, and that a common minimum standard of

⁸¹ According to s.11 of CEPA a substance is considered "toxic" for the purposes of the Act if "it is entering or may enter the environment in a quantity or concentration or under conditions

- a) having or that may have, an immediate or long-term harmful effect on the environment;
- b) constituting or may constitute a danger to the environment on which human life depends; or
- c) constituting or may constitute a danger in Canada to human life or health."

⁸² CEPA, s.29.

⁸³ Ibid., s.29(3)(a).

assessment is used in all assessments.

7.3 Weaknesses in the Existing Biotechnology Provisions of CEPA

The Standing Committee's recommendation that new biotechnology part be added to CEPA was based on a number of considerations. These included the following.

7.3.1 The Treatment of Biotechnology Products as a Adjunct to Chemical New Substances

CEPA currently deal with products of biotechnology as an add-on to the Act's provisions regarding chemical new substances. This approach fails to recognize the special environmental and human health risks posed by biotechnology products which distinguish them from traditional chemical substances. Two major areas of concern have been identified in this regard:

- (a) Many biotechnology products include life-forms which are self-replicating. Once released into the environment, they can reproduce, spread and mutate and transfer genetic material. The control of biotechnology products, and their genetic material, once in the environment, will therefore be difficult, if not impossible.
- (b) The technologies employed in the development of many new biotechnology products have only emerged over the past twenty years (especially recombinant DNA and cell fusion technologies). The evaluation of such products for potential environmental damage is surrounded by a great deal of uncertainty. Indeed, the scientific literature reflects wide concerns regarding the lack of adequate methodologies and data to properly assess the environmental and health effects of the products of biotechnology.⁸⁴

The specific environmental risks which have been identified in relation to biotechnology products include:⁸⁵

⁸⁴ Ecological Society of America, "The Release of Genetically Engineered Organisms into the Environment: A Perspective from the Ecological Society of America," Ecology Vol. 20, No. 2, April 1989.

⁸⁵ M. Tiedje, R. K. Colwell, Y. L. Grossman, R. E. Hodson, R. E. Lenki, R. N. Mack, and P. J. Regal, "The Planned Introduction of Genetically Engineered Organisms: Ecological Considerations and Recommendations," Ecology 1989, Vol. 20, No. 2, p. 301. See also E. Smit, J. D. van Elsas, and J. A. van Veen, "Risks Associated with the Application of genetically modified microorganisms in terrestrial ecosystems," FEMS Microbiology Reviews

- * the creation of new pests, such as the escape of a transgenic salt tolerant rice from cultivated fields into estuaries;
- * the enhancement of the effects of existing pests or creation of new pests through hybridization or gene transfer to related plants or microorganisms;
- * the enhancement of the effects of existing pests as a result of the selective pressures provided by plants modified for pest resistance or intensified pesticide arising in conjunction with the modification of plants for pesticide resistance;
- * infectivity, pathogenicity, toxicity or other harm to non-target species, including humans;
- * disruptive effects on biotic communities, resulting in the elimination of wild or desirable natural species through competition or interference;
- * adverse effects on ecosystem processes and functions, such as nutrient cycling; and
- * incomplete degradation of hazardous chemicals by microorganisms employed in bioremediation, and waste water treatment, leading to the production of even more toxic by-products.

These specific risks sometimes overshadow the more general risk of reducing biological diversity in any given ecosystem. Introduced species may, for example, disturb food-chains or habitats, which in turn will affect biodiversity.⁸⁶ Biotechnology can also threaten the biodiversity through its implicit drive to breed uniformity in plants and animals, and by furthering and encouraging monoculture.

It is important to note that these environmental and health risks not be limited to the introduction of genetically engineered or modified organisms. Naturally occurring organisms can behave as "exotic" species when introduced into ecosystems of which they are not native inhabitants. In addition, the introduction of a naturally occurring species into a natural habitat can have disruptive effects if the species is introduced in very high concentrations or quantities. It has also been argued that certain naturally occurring species of microorganisms that have potential to be used in bioremediation may be opportunistic human pathogens.⁸⁷

88 (1992), 263-278, and M. Mellon and J. Rissler, Perils Amid the Promise: The Ecological Risks of Transgenic Crops on a Global Market (Washington, D.C.: Union of Concerned Scientists, 1994).

⁸⁶ D. Pimentel, M. S. Hunter, J. A. LaGro, R. A. Efroymson, J. C. Landers, F. T. Mervis, C. A. McCarthy, and A. E. Boyd. "Benefits and Risks of Genetic Engineering in Agriculture", Bioscience (1989), Vol. 39, No. 9, pp. 606-614, at 609.

⁸⁷ Ernst and Young and Bio-Industry Council, A Brief Examination of the Bioremediation Industry Final Report (Ottawa: Environment Canada, June 1994), p. 38.

7.3.2 Biotechnology and the CEPA "Toxic" Test

The "toxicity" test forms the basis for CEPA's regulation of new substances. New substances must be found "toxic" under the definition employed by CEPA in order to be regulated under the Act. A number of problems have been identified with the definition and application of the concept of "toxicity" under CEPA in relation to chemical substances.⁸⁸

Specifically with respect to products of biotechnology, the "toxicity" standard, which is rooted in chemical toxicology, provides too narrow an evaluative structure in relation to the potential scope of the effects of the use of biotechnology products. It also may be an excessively stringent test in relation to the level of uncertainty regarding the environmental and health effects of biotechnology products. This is especially true with respect to the potential long-term, indirect and cumulative environmental and health risks associated with biotechnology products, such as impacts on biodiversity.

The need to determine that a substance is "toxic" prior to its regulation under CEPA is related to particular constitutional concerns regarding the establishment of the jurisdiction of Parliament to regulate toxic chemicals. However, a strong case can be made that products of biotechnology constitute a unique and bounded subject of national concern, which cannot be dealt with effectively by the provinces acting individually or collectively. Consequently, Parliament may have the constitutional authority regulate biotechnology products through its power to legislate of the Peace, Order and Good Government of Canada, without having to establish that they are "toxic" for the purposes of CEPA. Federal jurisdiction over Agriculture,⁸⁹ Fisheries,⁹⁰ Trade and Commerce,⁹¹ and Criminal Law in relation to public health,⁹² provide additional bases for the establishment of federal regulatory authority over biotechnology products.⁹³

⁸⁸ See Standing Committee on Environment and Sustainable Development, It's About Our Health!, Chapter 5.

⁸⁹ The Constitution Act, 1982, s.95.

⁹⁰ *Ibid.*, s.91(12).

⁹¹ *Ibid.*, s.91(2).

⁹² *Ibid.*, s.91(27). See *Re Canada Metal Co. Ltd., and the Queen*, (1982) D.L.R.(3d) 124 (Man Q.B.).

⁹³ For a detailed discussion of this issue see Winfield and Mausberg, "CEPA, Chemical New Substances and Biotechnology," pp. 20-21.

7.3.3 Public Participation in Decision-Making

The existing provisions of CEPA regarding the notification and assessment of new substances, including products of biotechnology, make virtually no provision for public participation in decision-making. No notice is provided to the public when new substances enter the assessment process, or when field trials of new substances, including products of biotechnology, are conducted. Furthermore, there are no routes of appeal when a substance is added to the DSL, when information requirements are waived, when conditions on substances "suspected of toxicity" are varied or rescinded, or when a field test of a new substance is approved. Public access to information regarding new substances, including products of biotechnology, is also extremely limited.

7.3.4 Regulation of Biotechnology Products not Regulated through CEPA

The problems related to the adequacy of the legislative framework for biotechnology products are not limited to CEPA. There are also continuing concerns over the scope of the legislative authority regarding environmental and human health evaluations of biotechnology products provided by the statutes under which Agriculture and Agri-Food Canada and other departments currently propose to regulate biotechnology products, using the CEPA section 26(3)(a) exemption through equivalent notification and assessment process mechanism. CEPA is presently the only federal regulatory statute which explicitly establishes regulatory authority in relation to biotechnology products.

In addition, many of the statutes under which it is proposed that biotechnology products be regulated contain no clear legislative authority for the evaluation of regulated products from an environmental or human health perspective. This is particularly true with respect to a number of the key agricultural statutes including the Seeds Act, the Fertilizers Act, and the Feeds Act. Indeed, an examination of the legislative record in relation to these statutes indicates that they were drafted primarily for the purpose of the prevention of fraud, and no reference was made to the conduct of evaluations for the purpose of the protection of the environment or human health.⁹⁴

This situation leaves significant portions of the government's proposed regulatory framework vulnerable to legal challenge. At best, the proposal to establish regulations for the environmental and human health assessment of biotechnology products under statutes which make no reference to biotechnology, and which provide no explicit authority for such evaluations amounts to a form of legislative amendment through regulation. This practice has

⁹⁴ See the Hon. D. Harkness, Minister of Agriculture, House of Commons Debates June 29, 1959 on the occasion of the second reading debate of the current version of the Seeds Act.

been strongly criticized on numerous occasions by Parliamentary Committees,⁹⁵ and by legal and constitutional scholars.⁹⁶

There are also a number of additional gaps in the legislative authority provided by such statutes as the Seeds Act, the Fertilizers Act and the Feeds Act. These include:

- * the absence of provisions establishing legislative authority for the evaluation of biotechnology products in terms of their likely impacts on biodiversity, or the regulation of the transboundary movement of biotechnology products, despite the likely establishment of such requirements through the proposed Biodiversity Convention Biosafety Protocol;
- * the absence of any provisions regarding public participation in decision-making, such as notice and comment provisions regarding major decisions, or public access to information regarding new products;
- * the absence of provisions establishing or designating appellate bodies for appeals of decisions made under these Acts, or regarding standing in, or outlining procedures for, such appeals;
- * the absence of any provisions regarding civil liability for harm to the environment or human health by regulated products; and
- * weak enforcement and penalty structures in comparison to CEPA.

Beyond these legal issues, consideration must also be given to the multiple roles being played by Agriculture Canada in relation to agricultural biotechnology. The Department has acted simultaneously as the lead creator, tester, promoter and regulator of agricultural biotechnology products in Canada. The conflicts of interest inherent in these promotional and regulatory functions must be recognized and addressed.

7.4 The Standing Committee's Recommendations Regarding Products of Biotechnology

In its report, the Standing Committee recommended that CEPA be amended to include a new part to deal specifically with products of biotechnology. This Part was to include minimum

⁹⁵ See, for example, Standing Joint Committee of the Senate and House of Commons on Regulations and Other Statutory Instruments, Fourth Report (1980) para 81 and Appendix II).

⁹⁶ See, for example, D. P. Jones and A. S. de Villars, Principles of Administrative Law (Toronto: Carswell, 1985).

notification and assessment standards for all products of biotechnology released into the environment, including those regulated under other Acts. Other federal statutes should only prevail over CEPA in regard to the assessment of the environmental impact assessment of biotechnology products, if their notification, assessment and regulatory standards are at least equivalent to those prescribed in CEPA.⁹⁷ The Committee also recommended that CEPA be amended to require the Governor-in-Council to publish a list of statutes considered to be at least equivalent to CEPA with respect to their assessment processes for products of biotechnology.⁹⁸

7.5 Comments on the Government's Proposals

The government's proposal regarding the regulation of biotechnology products under CEPA represents the most serious retrenchment contained in the government's response to the Standing Committee's report. It has the potential to endanger the health, safety and environment of Canadians by eliminating the minimum pre-manufacturing or importation environmental and health evaluation requirements for products of biotechnology currently provided by CEPA. In effect, the government is proposing to create a new biotechnology part for CEPA, but its primary purpose would be to exempt products of biotechnology from the Act's provisions.

Specific comments on the government's proposals are as follows:

Government Response - Introduction

The introduction to this Chapter of the government response indicates the direction of its proposal. Paragraph 3 of the introduction to the Chapter places the promotion of innovation, encouragement of investment, technology transfer and Canadian competitiveness, ahead of the protection of human health, safety, and the environment. Indeed, the government of Canada fails to acknowledge itself the possibility of adverse environmental or human health effects arising from products of biotechnology, attributing these concerns to "many."

Potential adverse environmental and health effects related to the manufacturing and use of products of biotechnology have been widely recognized within the scientific community.⁹⁹ The government's unwillingness to acknowledge the potential of biotechnology products to cause harm places the health, safety, and environment of Canadians at risk. The protection of

⁹⁷ Standing Committee on Environment and Sustainable Development, Its About Our Health! Towards Pollution Prevention, Recommendation 68.

⁹⁸ Ibid., Recommendation 69.

⁹⁹ See, for example, The Ecological Society of America, "The Release of Genetically Engineered Organisms into the Environment."

the health, safety, and environment of Canadians should be the overriding concern of the government of Canada in the regulation of products of biotechnology. Results of public opinion research indicate that Canadians place a much greater emphasis on the role of governments to protect health, safety and the environment in relation to biotechnology products than on the promotion of the interests of industry (See Table 1).¹⁰⁰

Recommendation:

- 93) *The Government of Canada should provide a clear statement that the protection of human health, safety and the environment is its primary consideration in the regulation of products of biotechnology.*

Government Response 7.1 - Definition of Biotechnology

The government proposes to retain the current definition of biotechnology contained in CEPA. The current definition of biotechnology contained in CEPA is adequate and should be retained.

Recommendation:

- 94) *The current definition of biotechnology contained in CEPA should be retained.*

Government Responses 7.2 to 7.4 - Separate Part for Live or Animate Products of Biotechnology

In these paragraphs, the government proposed to establish a new biotechnology part of CEPA, to apply to living products of biotechnology. Unfortunately, the proposed part would seriously weaken the existing provisions of CEPA in a number of ways.

Government Response 7.2 - Scope of the Proposed Biotechnology Part

The government proposes that the scope of the proposed part be limited to "living products of biotechnology." The term "living products of biotechnology" is not defined, and it is unclear if it is intended to apply to genetic material as well as living organisms. The CEPA biotechnology part should be focussed on products of biotechnology which may enter the environment. In general, it should not apply to medical applications of biotechnology (i.e., diagnostic tools) except where these

¹⁰⁰ See Optima Consultants Understanding the Consumer Interest in the New Biotechnology (Ottawa: Industry Canada, November 1994), Table 14.

TABLE 1¹⁰¹Table 14: LEVEL OF AGREEMENT WITH STATEMENTS
REGARDING GOVERNMENT'S ROLE IN BIOTECHNOLOGY

	Agree	Neutral	Disagree
	%	%	%
Protect the safety of workers in biotech industries	87	8	5
Determine the safety of biotech products	87	8	4
Enforce regulations on activities in biotech	84	10	5
Consult the public on regulating biotech products and uses	81	13	5
Conduct a public information campaign about biotechnology	77	14	9
Assess the benefits of biotech	76	16	7
Be involved in the ethical aspects of biotechnology	75	16	8
Educate the public by offering seminars on biotechnology	74	16	9
Financially support biotech research in companies	37	33	29
Develop biotech products for commercial purposes	33	28	37

¹⁰¹ From: Optima Consultants, Understanding the Consumer Interest in the New Biotechnology (Ottawa: Industry Canada, November 1994).

applications may have an impact on the environment or human health beyond the individuals to who have provided their informed consent to the application of the product.

Recommendation:

- 95) *The proposed CEPA biotechnology part should apply to all products of biotechnology which may enter the environment.*

Government Response 7.3 - Structure of the Proposed Biotechnology Part

The government proposes to use the existing CEPA section 11 criteria for "toxicity" and Canada's international commitments under the United Nations Convention on the Conservation of Biological Diversity to establish evaluative criteria for biotechnology products under the proposed CEPA biotechnology Part.

As noted earlier, the CEPA section 11 "toxicity" concept may not capture the full range of potential human health and environmental effects of biotechnology products. The potential indirect and long-term cumulative environmental and health impacts of commercial scale uses of products of biotechnology must be considered. Particular attention should be given to the full range of impacts of the pest control and other "systems" of which biotechnology products are sometime integral parts. This must necessarily include an evaluation of the purposes of products, their capacity to react with and contaminate the natural environment (including naturally-occurring species), and the availability of potentially less harmful alternatives.

Recommendation:

- 96) *The evaluative criteria established by the CEPA biotechnology Part should include consideration of:*
- * potential immediate or long-term, direct or indirect, harmful effects on human life or health, including cumulative impacts and the effects of occupational exposure;*
 - * potential immediate or long-term, direct or indirect, harmful effects on the environment, including cumulative impacts;*
 - * potential immediate or long-term, direct or indirect, harmful effects on biological diversity, including cumulative impacts;*
 - * the availability and likely effectiveness of monitoring control, waste treatment and emergency response plans with respect the product;*
 - * the potential effectiveness of the product for its intended purpose; and*
 - * the availability of alternative means of achieving the product's purpose which may present lower potential for harm to the environment and human health.*

The government's proposals make no provisions for public participation in decision-making

regarding products of biotechnology.

Recommendation:

97) *The new CEPA Biotechnology Part should make the following provisions for public participation in decision-making regarding products of biotechnology:*

i) *Public Notice:*

- (a) *notification, in the Canada Gazette and/or on the proposed public registry, when applications are made for the approval of the manufacture, use, import or export of new biotechnology products, or products containing new biotechnology products, followed by a public comment period of not less than ninety days following the notice;*
- (b) *notification, in the Canada Gazette and/or on the proposed public registry, of the Ministers' decisions to approve, approve with conditions or prohibit, the import, manufacture, use, sale, export or discharge into the environment of biotechnology products, followed by a public comment period of not less than thirty days for decisions to approve or approve with conditions the import, manufacture, sale, export, or discharge into the environment of biotechnology products.*
- (c) *notification, in the Canada Gazette and/or on the proposed public registry, of ministerial intentions to vary or rescind conditions or prohibitions imposed on the use, import, manufacturing, sale, export or discharge into the environment of biotechnology products, followed by a public comment period of not less than ninety days.*
- (d) *notification, in a newspaper of general circulation in vicinity of the test and on the proposed public registry, of proposals for field tests of products of biotechnology. Direct notification of the owners and occupiers of lands adjacent to the test site should also be required. A comment period of not less than sixty days should follow notice of a proposed field test.*

ii) *Notices of Objection*

Members of the public should be permitted to file notices of objection under the following circumstances (also see recommendations in chapter 3 of this brief):

- (a) *following public notice of the Ministers' decisions to approve, approve with conditions or prohibit, the import, manufacture, use, sale, export or discharge into the environment biotechnology products;*

- (b) following public notice of the Ministers' intention to vary or rescind conditions or prohibitions imposed on the use, import, manufacturing, sale, export or discharge into the environment of a biotechnology product; and
- (c) following public notice of proposals for field tests of products of biotechnology.

Boards of Review should be required to be established unless the request is frivolous or vexatious, approvals should be suspended until any notice of objection is resolved, and intervenor funding should be provided for bona fide public interest intervenors.

iii) Access to Information

The public should be provided to the information submitted in response to the to the information requirements regarding new biotechnology products in a manner consistent with the following principles:

- * the definition of what can be kept confidential be narrowed to include only "trade secrets;"
- * the claimant for confidentiality be required to provide supportive evidence of confidentiality when making a claim;
- * requests for confidentiality on the identities of substances which will, or may be, released into the environment, should not be permitted;
- * requests for confidentiality should not be permitted regarding information on toxicology, ecological effects, epidemiology or health and safety studies;¹⁰² and
- * there be a public appeal process regarding determinations that information is confidential.

iv) Biotechnology Release Database

The biotechnology part of CEPA should also provide for the establishment of a data-base on the environmental release of all biotechnology products in Canada. Such a data base would be of assistance to governments, researchers, and other members of the public in assessing the overall use and effects of biotechnology products released into the Canadian environment. All environmental releases should be required to be entered into the data base, and members of the public should have direct access to the data base.

¹⁰² CEPA s.20(1)(f) only allows releases of summaries of this type of information.

Government Response 7.4 - Application of the New CEPA Biotechnology Part

The application of the government's proposed CEPA biotechnology part will be much narrower than the current provisions of CEPA, and unlike the existing provisions, no minimum notification and environmental and human health assessment standard will be established for products of biotechnology regulated under other Acts.

The current CEPA provisions require that all products of biotechnology be regulated either under CEPA or another Act of Parliament which provides for pre-manufacturing or import notification and an assessment of potential "toxicity." The government's proposal would weaken this standard in three ways.

First, the government's proposal states that the new CEPA part would not apply to products of biotechnology that may be regulated under other Acts of Parliament. This means that products would be exempted from the CEPA requirements on the basis of a potential to be regulated under another Act, and not the actual existence of notification and assessment regulations equivalent to those made under CEPA, as is presently the case. In practice, this provision would mean that it would be unlikely that the new CEPA biotechnology part would actually apply to any products of biotechnology, including those currently expected to be regulated under the proposed the CEPA New Substances Notification Regulation Part III - Biotechnology Products, such as microorganisms used in bioremediation, mining, waste-water treatment, and other applications.

Second, the government's proposal suggests that there may be "circumstances where (notification and assessment) regulations are not required" for biotechnology products. This means that there may be categories of products of biotechnology which are left unregulated from an environmental and human health perspective. The existing provisions of CEPA require that all products of biotechnology be subject to notification and assessment either under CEPA or under another Act of Parliament.

Third, under the government's proposal, CEPA would no longer provide a benchmark standard of assessment for products of biotechnology regulated under other Acts of Parliament. Currently, in order to obtain an exemption from CEPA, a product must be regulated under another Act which provides for pre-manufacturing or import notification and assessment of its potential to be "toxic" as defined by CEPA. This benchmark standard would be eliminated by the government's proposal. Different standards of notification and assessment would apply to different products of biotechnology depending upon under which other Act of Parliament they fall. Any consistency in notification and assessment processes for biotechnology products in Canada would be lost.

The government's proposal is clearly a major step backwards from the existing provisions of CEPA. It is a distortion of the intent of the Standing Committee's recommendation, and it has the potential to endanger the lives, health and environment of Canadians as well as undermine any consistency in the regulation of products of biotechnology in Canada. It must

be rejected for these reasons.

Furthermore, the multiple roles being played by Agriculture and Agri-Food Canada in relation to agricultural biotechnology need to be recognized. The Department has acted simultaneously as the lead creator, tester, promoter and regulator of agricultural biotechnology products in Canada. The conflicts of interest inherent in these promotional and regulatory functions must be addressed.

Recommendation:

- 98) *The new biotechnology part for CEPA should apply to all products of biotechnology which may enter the environment, without exception, including those currently proposed to be regulated under other Acts of Parliament, such as the Seeds Act, Pest Control Products Act, Fertilizers Act, and Feeds Act. The new CEPA biotechnology, and regulations made under it, should be administered by Environment Canada and Health Canada.*

Government Response 7.5 - Cost Recovery

The government's proposals on this issue addresses two distinct issues. The first is to establish authority for setting fees for services provided to Canadians in relation to CEPA regarding biotechnology products, such as the conduct of notification and assessment procedures, the issuing of permits, and the monitoring of environmental effects of activities authorized under permits. These proposals deserve strong support. They are consistent with the polluter pays principle, and provide a means of ensuring that Environment Canada and Health Canada's capacity to assess and oversee the importation, manufacturing, testing, sale and use of biotechnology products in Canada is maintained.

Recommendation:

- 99) *The new CEPA biotechnology part should include authority to impose a full-cost-recovery, user-pay system for the processing of notification and assessment information, the approval and monitoring of field trials of products on biotechnology, and monitoring related to conditions imposed on the import, manufacture, use, sale, or export or products of biotechnology.*

The government also proposes to establish clear authority for the issuing of permits relative to the importation, testing, manufacturing or use of biotechnology products that are regulated under CEPA. This proposal appears to be consistent with CIELAP's recommendation that the process for granting approvals for field trials, and the import, sale, manufacturing or use of

products of biotechnology be clarified.¹⁰³ Implicit in this proposal is a separation of federal regulatory authority over biotechnology products from a finding of "toxicity" under CEPA. This is also consistent with CIELAP's recommendations to the House of Commons Standing Committee.

Recommendation:

- 100) *The CEPA biotechnology part should establish clear authority for the issuing of permits relative to the importation, testing, manufacturing or use of biotechnology products that are regulated under CEPA. This authority should include the capacity to:*
- * *approve the testing, manufacture, use, processing, release or discharge into the environment, sale, offering for sale, import or export the new biotechnology product and products containing the new biotechnology product without conditions;*
 - * *approve the manufacture, use processing, release or discharge into the environment, sale, offering for sale, import or export of the new biotechnology product and products containing the new biotechnology product subject to any conditions which the minister chooses to impose; or*
 - * *impose a total, partial, or conditional prohibition of the manufacture, use, processing, release or discharge into the environment, sale, offering for sale, import or export of the biotechnology product or a product containing the new biotechnology product.*

Government Response 7.6 - International Commitments

The government proposes to provide authority to make regulations necessary to implement agreements made under international protocols and conventions, where regulations do not exist under other federal Acts. The proposal to have provision of authority to implement international commitments in relation to products of biotechnology which may enter the environment is supported. As Environment Canada and Health Canada would be lead agencies responsible for the environmental and health regulation of biotechnology products, the CEPA biotechnology part should be the government's primary vehicle for the implementation of such commitments.

Recommendation:

- 101) *The CEPA biotechnology part should provide authority to make regulations to implement international agreements regarding biotechnology to which Canada*

¹⁰³ Winfield, ed., Reforming CEPA, Recommendations 33 and 39.

is a Party.

Government Response 7.7 - Application to Pollution Prevention

The government proposes to provide authority in CEPA to set criteria for the effective and safe use of live products of biotechnology in pollution prevention where regulatory authority does not exist under other federal Acts. The rationale for this provision is unclear, as the necessary authority to deal with such products would be provided elsewhere in the proposed CEPA biotechnology part.

Government Response 7.8 - Agreements to Develop, Gather, and Share Data on Biotechnology

The government proposes to provide authority in a renewed CEPA for the Ministers of the Environment and of Health to enter into bilateral, multilateral and international agreements to develop, gather and share data on biotechnology.

Recommendation:

- 102) *CEPA should be amended to provide the Ministers of the Environment and of Health the authority to enter into bilateral, multilateral and international agreements to develop, gather and share data on biotechnology.*

7.6 Conclusions

The government's proposal for a new biotechnology part for CEPA would significantly weaken the provisions of the existing Act as they apply to biotechnology. The minimum standards for notification and assessment of toxicity for all products of biotechnology currently provided for by CEPA would be eliminated. The application of the proposed CEPA biotechnology part would also be much narrower than is currently the case. In effect, the government is proposing a biotechnology part which would be unlikely to actually apply to any products of biotechnology, and would not set a standard of assessment for environmental and human health evaluations of biotechnology products under other Acts.

This proposal is inconsistent with the intent of the Standing Committee's recommendations regarding the regulation of biotechnology under CEPA, and could potentially endanger the health, safety and environment of Canadians. Consequently, the government's proposal cannot be supported.

As an alternative, it is proposed that, consistent with the intent of the Standing Committee's recommendations on the regulation of biotechnology products under CEPA, the a new

biotechnology part be established under the Act. The new CEPA biotechnology part would:

- * apply to all products of biotechnology which may enter the environment, including those which the government currently proposes to regulate under other Acts, such as the Seeds Act, the Pest Control Products Act, and the Fertilizers Act.
- * establish requirements for the assessment of biotechnology products in terms of their:
 - * potential immediate or long-term, direct or indirect effects on human life and health, the environment, and biodiversity;
 - * potential effectiveness of the product for their intended purpose; and
 - * the availability of alternative means of achieving the product's purpose which may present lower potential for harm to the environment and human health;
- * provide for public participation in decision-making regarding biotechnology products, including:
 - * public notice of major decisions regarding biotechnology products;
 - * public notice of proposed field tests of biotechnology products;
 - * opportunities to appeal government decisions regarding biotechnology products, including the approval of field tests; and
 - * enhanced access to information regarding products of biotechnology;
- * provide authority to implement international environmental agreements regarding products of biotechnology;
- * provide for the establishment of a database of environmental releases of products of biotechnology in Canada; and
- * provide for establishment of a full-cost-recovery, user-pay system for the processing of notification and assessment information, the approval and monitoring of field trials of products on biotechnology, and monitoring related to conditions imposed on the import, manufacture, use, sale, or export of products of biotechnology.

This proposal for the establishment of a separate biotechnology part of CEPA is intended to provide the basis of a regulatory structure for biotechnology products which would ensure the protection of environmental integrity and human health, and strengthen public confidence in the government of Canada's evaluative and regulatory processes for these products.

CHAPTER 8 - CONTROLLING POLLUTION AND WASTES

8.1 Introduction

Chapter 8 of the government response focuses on a number of issues: international air pollution, fuels, motor vehicle emissions, international water pollution, nutrients, hazardous and non-hazardous wastes and oceans. Some of the proposals are positive (such as the proposals pertaining to the ocean dumping provisions of CEPA) and should be supported. Others weaken the existing CEPA and must be rejected. Each of these areas will be discussed below.

8.2 International Air Pollution

Government Response 8.1 - International Air Pollution

The government proposes to "put to better use the current provisions of Part V" of CEPA. This part of CEPA allows the federal government to develop regulations to control sources in Canada when the Ministers of Environment and Health have reason to believe that air pollution in Canada is creating air pollution in another country or results in or is likely to result in the violation of an international agreement entered into by Canada.

Transboundary air pollution is a major problem both between Canada and the United States and globally.¹⁰⁴ Unfortunately, the U.S.-Canada Air Quality Agreement and other international accords are not the complete answer. Canada must take strong action to curb air pollution emanating from Canada. Part V of CEPA provides the regulatory authority for Environment Canada to undertake this task.

The Standing Committee studied Part V of CEPA. In reviewing this section, it was the Committee's view that these provisions should be used to deal with international air contaminants such as greenhouse gases. In fact, the Committee recommended that these provisions of CEPA be used by the federal government to meet its international commitment to stabilize greenhouse gas emissions at 1990 levels by the year 2000.¹⁰⁵ The Committee also recognized the Liberal Party's commitment to improve energy efficiency and increase the use of renewable energies with the aim of cutting carbon dioxide emissions by 20 percent from 1988 levels by the year 2005.¹⁰⁶

¹⁰⁴ See for further discussion, Canadian Environmental Law Association, Submissions to the International Joint Commission on the U.S.-Canada Air Quality Agreement, December 5, 1995.

¹⁰⁵ Recommendation 82, see above.

¹⁰⁶ Liberal Party, Creating Opportunity: The Liberal Plan for Canada, 1993, p. 70.

However, the government proposal is extremely confusing in terms of the proposal's intent and effect. Even though the proposal commits to a "framework" to deal with the problem and "comprehensive management," the effect of this proposal will not meet these commitments.

While ostensibly dealing with international air pollution, the effect of the government proposal would be to pre-empt federal action because, apparently, all federal initiatives would have to be undertaken with agreements with the provinces. Clearly, in the vast majority of instances, there would be enormous difficulty in getting all of, even most of, the provinces to agree on strong environmental commitments.

Hence, it is preferable at this point in time not to amend Part V of CEPA. The federal government should retain its authority to address sources contributing to international air pollution. Under these provisions there are already clear obligations to consult with the provinces. The federal government already has the legislative power to deal with international air pollution and process to accommodate federal-provincial relations.

Recommendation:

103) *Part V of CEPA should be retained as stated. Hence, government proposal 8.1 should not result in any legislative change. While the federal government is under a duty to consult with the provinces, the federal government should be reminded of its overall mandate which is to protect the health of Canadians and their environment. Part V of CEPA is a tool that can be used to deal with various air pollution problems.*

8.3 Fuels

The government has outlined a number of proposals with respect to fuels.

Government Response 8.2 - National Standard for Fuels

The government proposes to incorporate into CEPA the authority to make regulations setting national standards for fuels, where the fuels would cross provincial borders or are imported into Canada.

Recommendation:

104) *Government proposal 8.2 concerning the addition of authority to make regulations setting standards for fuels that cross borders or are imported into Canada is supported. However, there will be need for public consultation when the government intends to exercise this authority by making regulation.*

Government Response 8.3 - Performance Based Regulations

The government proposes to add wording to CEPA to allow regulations to specify a range of characteristics.

Recommendation:

- 105) *Government proposal 8.3 concerning the addition to CEPA of the authority to specify a range of characteristics is supported. However, there will be need for public consultation when the government intends to exercise this authority by making regulation.*

Government Response 8.4 - Impact of Fuels on Pollution Control Equipment

The government proposes to add to CEPA wording that would provide authority to deal with the negative impact that certain characteristics or constituents of fuels may have on pollution control equipment.

Recommendation:

- 106) *Government proposal 8.4 concerning adding addition authority to deal with the impact of fuels on pollution control is supported.*

Government Response 8.5 - "on the combustion of the fuel in ordinary circumstances"

The government proposes to amend the wording of CEPA to allow for Environment Canada to regulate fuels at other than the combustion stage of use. One example is to regulate evaporation stages which is considered to be a significant source of air pollution.

The Standing Committee made a similar recommendation to amend section 46 and 47 of the Act, and in particular, to ensure that CEPA had adequate authority to permit Environment Canada to regulate additives to protect the environment. Moreover, the Standing Committee wanted this authority to be undertaken based on the weight of evidence.¹⁰⁷

Recommendation:

- 107) *Government proposal 8.5 is supported. However, it should be made explicit that sections 46 and 47 of CEPA be amended to empower Environment Canada to make regulations in respect of fuels and fuel additives quickly and efficiently, based on a*

¹⁰⁷ Recommendations 70 and 71, see above.

weight of evidence approach.

Government Response 8.6 - Authority to Prohibit Export of Environmentally Harmful Fuels and Fuel Ingredients

The government proposes to address the issue of control of export of fuels. The proposal identifies that position that the government does have the authority to regulate and prohibit the export of most hydrocarbon fuels under the National Energy Board Act. The Standing Committee proposed that CEPA be amended to provide more direct authority to Environment Canada to ensure that the same health and environmental standards are applied to fuels and fuel additives that are applied in Canada are applied to fuels and fuel additives destined for export to other countries.

Recommendation:

- 108) *Despite the position by the federal government that it has the authority to regulate fuels under the National Energy Board Act, a more direct authority is needed under CEPA to ensure that the standards for fuels and their additives in Canada are applied to fuels and fuel additives destined for export to other countries.*

8.4 Motor Vehicle Emissions

The government has made two proposals with respect to motor vehicle emissions: the first to transfer authority over vehicle emissions to Environment Canada; and the second to grant greater authority to regulate.

Government Response 8.7 - Transfer of Authority to Environment Canada

The government proposes to examine the possibility of transferring legislative authority for emissions from new motor vehicles from the Motor Vehicle Safety Act to CEPA, thus consolidating most authority for fuels, fuel additives and vehicles emissions under a single federal Act.

The Standing Committee went further than the government proposal in that it recommended that the authority be transferred.¹⁰⁸

Recommendation:

- 109) *Legislative authority for vehicle emissions should be transferred from the Motor*

¹⁰⁸ Recommendation 72, see above.

Vehicle Safety Act and Transportation Canada, to the CEPA and Environment Canada, thus consolidating authority for fuels, fuel additives and vehicle emissions under a single federal Act.

Government Response 8.8 - Additional Authority to Regulate

The government also proposes to give additional authority to regulate emissions from new off-road vehicles and utility engines for equipment such as generators.

Recommendation:

- 110) *The proposal to add authority to regulate emissions from new off-road vehicles and utility engines is supported and should be implemented.*

8.5 International Water Pollution

The government proposes to draft new sections for CEPA that would address international water pollution, parallel to those provisions for international air pollution. Also, these provisions would meet the reciprocity requirements of the U.S. Clean Water Act.

The government proposal is supportable and long overdue. However, the government proposal also states that these new provisions "could be modelled on the international air pollution prevention provisions in Part V of the current CEPA." This proposal is problematic in that, if the government models the international water pollution provisions after the changes proposed in response 8.1, then federal action will be constrained by the need to acquire provincial agreement. As noted above, the proposed changes in response 8.1 have the effect of diminishing the capacity of the federal government to deal with international air pollution. Hence, the proposal to provide authority to deal with international water pollution should be premised on the present Part V of CEPA, not the proposed amendment.

Recommendation:

- 111) *The government proposal to give authority to the federal government to address international water pollution is supported. This authority should be modelled on the existing provisions of CEPA Part V - International Air Pollution.*

8.6 Nutrients

The government proposed two changes to Part III of CEPA that deals with nutrients.

Government Response 8.10 - Definition of Nutrient

The government proposed a number of wording changes to the definition of nutrient. These changes were recommended by the Standing Committee.¹⁰⁹

Recommendation:

- 112) *The government proposal 8.10 pertaining to the definition of nutrients is supported and should be implemented.*

Government Response 8.11 - Regulation of Nutrients

The government proposes to undertake a study within the next 12 months regarding the environmental effects of nutrients entering the environment.

The Standing Committee recommended that Environment Canada regulate phosphate content of cleaning agents other than laundry detergents under Part III of CEPA within one year of the tabling of their report. It also recommended a study for nutrients in cleaning agents other than phosphates.¹¹⁰

Recommendation:

- 113) *It is appropriate that Environment Canada undertake an in-depth study on nutrients from sources other than laundry detergents. Moreover, upon the completion of the study and the finding of adverse environmental effects, there must be a commitment to regulate as soon as practical after that time.*

8.7 Reduction of Hazardous Wastes and Non-Hazardous Wastes

The government proposes a number of reforms to the reduction of hazardous and non-hazardous wastes.

Government Response 8.12 - Waste Definition

The government proposes to embark on a process to develop an appropriate definition of waste to be used in OECD discussions and for domestic purposes.

¹⁰⁹ Recommendation 67, see above.

¹¹⁰ Recommendations 65 and 66, see above.

Recommendation:

- 114) *Canada should develop an appropriate definition of waste. This definition should include hazardous recyclable waste and materials sent to incineration and energy-from-waste facilities.*

Government Response 8.13 - Responsibilities of Users and Producers

The government proposes to incorporate the principle of producer and user responsibility into CEPA and would apply this principle to substances as well as products.

Recommendation:

- 115) *The principle of producer and user responsibility should be incorporated into CEPA.*

Government Response 8.14 - Maintaining Current Controls

The government proposes to maintain the current authority in CEPA to require notice be given to Canadian authorities before hazardous wastes are exported from or imported to Canada, and to set conditions governing export and import of hazardous wastes for the purposes of disposal and recycling.

Recommendation:

- 116) *The government's proposal to maintain current controls and to set conditions for disposal and recycling is supported. The government should then use this authority to amend current regulations to implement the Basel Convention such that the export of hazardous waste to non-OECD countries destined for recovery-recycling operations be phased-out by the end of 1997.*

Government Response 8.15 - Reduce/ Phase-out the Quantity of Hazardous Waste

The government proposes that CEPA be amended to require exporters to have plans for reducing/phasing out the quantity of hazardous waste that is being exported for the sole purpose of final disposal. This could include plans to reduce at source, recycle or recover material from this waste stream. Hazardous wastes being exported for the sole purpose of recycling would not be affected by this provision.

Recommendation:

- 117) *Government proposal 8.15 requiring exporters to have the plans for the reducing and*

phasing out of hazardous waste is supported. However, this requirement should also include plans for recycling of hazardous wastes since there are environmental releases to the environment occurring in the recycling process and in the use of the recycled material.

Government Responses 8.16 and 8.17 - New Authority to Ban Exports and Imports and New Authority to Control Exports and Imports

The government of Canada proposes to amend CEPA to clarify the authority to make regulations to ban exports and imports of hazardous waste to and from any country when required under international environmental agreements to which Canada is a party. It is also proposed by the government to amend CEPA to give authority to Environment Canada to refuse the export or import of a hazardous waste if the waste in question is not to be managed in an environmentally sound manner according to international agreements to which Canada is a party.

The Standing Committee recommendations on the matter went further than the government proposal. It proposed that CEPA and its regulations should be amended to ban immediately all exports of hazardous wastes destined for disposal to non-OECD countries, and to phase-out the export of hazardous waste to non-OECD countries destined for recovery-recycling operations by the end of 1997.¹¹¹

Recommendation:

118) *Further to the recommendation above, CEPA and its regulations should be amended to ban immediately all exports of hazardous wastes destined for disposal to non-OECD countries, and to phase-out the export of hazardous waste to non-OECD countries destined for recovery-recycling operations by the end of 1997. As a general principle, when Canada is party to an international environmental agreement, the requirements for that agreement should automatically be incorporated into regulations.*

Government Responses 8.18 and 8.19 - New Controls for Non-Hazardous Solid Wastes and Authority to Ban Exports and Imports

The government proposes to add authority for the government to control the export from and import into Canada of non-hazardous solid wastes for final disposal. The proposal is also to add authority to CEPA to ban the export and import of non-hazardous solid wastes for final disposal.

¹¹¹ Recommendation 83.

The Standing Committee recommended that CEPA be expanded to include authority to implement Canada's commitment under the Canada-U.S.A. Agreement on the Transboundary Movement of Hazardous Waste to control the movement of non-hazardous solid to or from the United States.¹¹²

It has also proposed that the import and export of movement of municipal solid wastes be scheduled within a reasonable time.¹¹³

Recommendation:

- 119) *Authority should be provided through CEPA to control the export from and import into Canada of non-hazardous solid wastes for final disposal as well as the authority to ban the export and import of non-hazardous solid wastes for final disposal. Further, however, the import and export of movement of municipal solid waste should be scheduled for phase-out within a reasonable timeframe.*

Government Response 8.20 - Interprovincial/Territorial Movements of Hazardous Wastes

The government proposes to amend CEPA to include authority to control the interprovincial/territorial movement of hazardous recyclables destined for recovery operations and of hazardous waste for final disposal, through a manifest system, to ensure that such movements are properly tracked and destined to environmentally sound facilities.

Recommendation:

- 120) *Government proposal 8.20 to add authority to control interprovincial provincial/territorial waste movements for recovery and final disposal is supported.*

Government Response 8.21 and 8.22 - Implementation of a Cost Recovery System

The government proposes to amend CEPA to provide authority to charge fees for and thereby recover government costs of processing applications, notices and other documents related to the export and import of hazardous wastes and to the movement of those wastes within Canada. Further, there is the proposal to extend the authority for cost recovery to the processing of any applications, notice or other documents for the export and import of non-

¹¹² Recommendation 84.

¹¹³ See: Ontario Toxic Waste Research Coalition, Canadian Environmental Protection Act Review: Transboundary Waste Movement Provisions.

hazardous solid wastes.

Recommendation:

- 121) *Government proposals 8.21 and 8.22 for the authority to implement a cost recovery system with respect the administration of the Acts provisions regarding the transboundary movement of hazardous and non-hazardous wastes are supported.*

Additional Recommendation:

The government response document discusses, without issuing a recommendation, international negotiations concerning commitments with respect to liability and compensation. These are important issues. Not only should these issues be discussed at the international level, but also within Canada.

- 122) *The government should establish a liability and compensation regime related to environmental damage arising out of the transboundary movement of hazardous wastes.*

8.8 Ocean Disposal

8.8.1 Introduction

The Standing Committee recommended a number of relatively minor changes to the ocean dumping provisions in CEPA (Part VI). The government has responded to most of these recommendations positively, although several recommendations have been ignored and the support for others is equivocal.

The limited nature of both the Committee's recommendations and the government's response should not be taken as a sign that all is well in Canada's oceans. Ocean dumping is a relatively small contributor to marine pollution in Canada. As stated by Resource Futures International in their evaluation of CEPA, "The fundamental problem is that Canada currently does not have an effective overall strategy to address the problem of land-based pollution. Land-based sources constitute up to 80% of marine pollution."¹¹⁴

Even where ocean dumping occurs, land based pollution is often the source of the problem. Ninety percent of all material dumped at sea under ocean dumping permits is ocean sediment, much of which is contaminated with toxics from land based activities. Heavy metals,

¹¹⁴ Resource Futures International, Evaluation of the Canadian Environmental Protection Act, Final Report, Ottawa, 1993.

agricultural chemicals, and organic compounds in dredged material are dangerous because of both persistence, toxicity and their bioaccumulation potential.¹¹⁵ The key answer to reducing these sources of pollution lies not in improving ocean dumping provisions of CEPA but in improving regulation of toxics.

8.8.2 The Existing CEPA Ocean Dumping Provisions

The provisions of CEPA Part VI, and its predecessor, the Ocean Dumping Act, closely reflect developments in international law. The international community adopted the London Dumping Convention in 1972 after belated recognition that the ocean could not continue to be used as an unlimited dump ground for everything from fish offal and construction debris to municipal waste and toxic waste.¹¹⁶ The London Dumping Convention has been improved over the years, being amended most recently in 1993 to prohibit the dumping of most industrial wastes. Most recently signatories have developed a Waste Assessment Framework aimed at reducing the use of oceans for dumping. Agenda 21 also calls for reduced ocean dumping.¹¹⁷

Part VI of CEPA regulates ocean dumping through a system of permits and inspection. Part I of Schedule III lists substances that may not be dumped, and Part III of Schedule III lists a number of factors to be considered in the issuance of ocean dumping permits. Under section 71(3) the Minister may not generally grant permits for dumping unless in the opinion of the Minister either

- (a) in the substance will be rapidly rendered harmless by physical, chemical or biological process of the sea, or
- (b) in the substance does not contain prohibited substances in a quantity greater than that permitted by the regulations.

The Ocean Dumping Regulations, 1988 specify the information that must be provided in an ocean dumping permit application and specifies maximum concentrations of certain substances that may be dumped. The Regulations also set a \$2,500 permit fee.

¹¹⁵ Elaine Hughes "Ocean Dumping and Its Regulations in Canada" in Canadian Yearbook of International Law Vol. 26, p. 158, 1988.

¹¹⁶ Elaine Hughes, above at footnote 2, p. 155.

¹¹⁷ "States acting individually...or multi-laterally...should assess the need for additional measures to address degradation of the marine environment...(b) from dumping, by...(ii) encouraging the London Dumping Convention parties to take appropriate steps to stop ocean dumping and incineration of hazardous wastes."

8.8.3 Weaknesses in the Existing Ocean Dumping Provisions of CEPA

As noted in the introduction, Canada's greatest failure in dealing with ocean pollution is its failure to fully regulate land based sources of pollution. The best means of eliminating the source of marine pollution is improving Canada's regulation of toxics and reducing overall land-based pollution.

While Part VI of CEPA may not be the mechanism which controls all sources of ocean pollution, there are still a number of improvements that can be made to Part VI and its administration.

First, Part VI has a limited conception of ocean dumping. It is restricted to dumping from ships, aircraft etc., and does not include disposal off wharves and in the intertidal zone. Nor does the definition of dumping in CEPA include disposal of ships, drilling platforms and other manufactured structures. (It appears that CEPA is administered to include these activities. Inclusion would be consistent with the definition of dumping in the London Dumping Convention.)

Whether or not Canada's regulation of toxics and control of land-based pollution are improved, there will be a continued need to ensure that dumping of sediments and other waste does not cause damage to the environment. Environment Canada's administration of the Part VI has improved in the last decade, with increased attention to monitoring of dumping sites.

Environment Canada is in the process of developing sediment quality interim guidelines for a number of substances aimed at ensuring against adverse environmental impacts. Present and future guidelines may be inadequate in identifying long term effects caused by persistent toxics in sediment.¹¹⁸ Ongoing development of guidelines should be aimed at ensuring that long term impacts of contaminated sediment are fully considered. Where long term impacts are not fully understood the precautionary principle should be applied.

Part of the difficulty in setting appropriate guidelines for sediment quality is the poor level of understanding regarding the cumulative effects and long term fate of contaminants in dumped material. This level of understanding can only be improved by extensive environmental effects monitoring. Monitoring of dump sites has improved markedly but is dependent on budgetary allocations.

It should be noted that sediment quality guidelines do not have the effect of law. Section 71(3) of CEPA allows permits to be issued where concentrations of prescribed substances is below specified limits or where biological processes would rapidly render substances harmless. Section 71(3) suggests that permits may be issued even where biological processes would not render a substance harmless.

¹¹⁸ Resource Futures International, above at footnote 1, p. 73.

Other weaknesses in the ocean dumping provisions of CEPA include:

Failure to fully incorporate pollution prevention principles: The permit application form used in the Ocean Dumping Regulations, 1988 requires applicants to list efforts to reduce, reuse and recycle material dumped, but neither CEPA nor the regulations clearly incorporate a pollution prevention hierarchy or refer to the pollution prevention principle. (Part III only states that Environment Canada should consider the practical availability of alternative land-based methods of treatment, disposal or elimination.)

Failure to fully incorporate the polluter pay principle: A flat fee of \$2,500 is charged to cover Environment Canada's cost of processing applications, but the fee does not fully recover the complete cost of monitoring, enforcement, or public consultation, let alone the environmental costs of dumping. Also, the fee does not vary depending on the nature or quantity of the material dumped. The low cost of ocean disposal is likely a factor in the failure to develop adequate fish offal recycling facilities on the East Coast.

Public Involvement: The Ocean Dumping provisions of CEPA are also weak in terms of their provisions for public involvement. The public has no regulated role in the selection of ocean dumping sites. While permit applicants or holders can require a Board of Review if a permit is denied or amended, the public has no right to even request a Board of Review in challenging a permit issuance. Even if the public did have such a right it would be negated by the possibility that dumping can occur within one day of public notice being given.

8.8.4 The Standing Committee's Recommendations regarding Ocean Dumping

The Standing Committee made a number of recommendations to improve the ocean dumping provisions of CEPA. Firstly, the Committee recommends that Part VI be amended to include explicit references to the polluter pays principle, the ecosystem approach, the precautionary principle and the pollution prevention principle. Also they recommend incorporation of these principles in practice. For instance, the Committee has recommended that permit fees fully cover all monitoring, enforcement and permit administration costs. Other recommendations include expansion of the definition of ocean dumping and proof that ocean dumping is the environmentally preferable disposal method, development of recommendations for the environmentally sound disposal of contaminated sediment, and improved public process.

8.8.5 The Government's Response to the Standing Committee's Proposal

The government has responded positively to most of the recommendations in the Standing Committee's Report. The government response includes a number of proposed improvements to the current regulation of ocean dumping.

Other proposals and several failures to make proposals require comment.

Guiding Principles

The Standing Committee recommended amendments to Part VI of CEPA to include explicit references to the polluter pays principle, the ecosystem approach, the precautionary principle and the pollution prevention principle. This call for incorporation of guiding principles into Part VI of CEPA is not referred to in the government's response, other than the government's suggestions for changes to the preamble and declaration section of CEPA. (When suggesting these changes many of the suggested definitions are significantly weaker than recommended by the Standing Committee). Incorporation of fundamental principles such as the ecosystem approach, precautionary principle and pollution prevention principle directly into Part III of Schedule III to CEPA will ensure their consideration in the issuance of permits.

Recommendation:

- 121) *The government should amend Part VI of CEPA to include explicit references to the polluter pays principle, the ecosystem approach, the precautionary principle and the pollution prevention principle. These principles should be defined as recommended by the Standing Committee. Part III of Schedule III should also be amended to incorporate the ecosystem approach, the precautionary principle and the pollution prevention principle as principles to be considered in the issuance of ocean dumping permits.*

Government Response 8.23 - Environmental Objectives and Codes of Practice

The government proposes to amend CEPA to authorize the creation of environmental objectives and codes of practice to preserve the quality of coastal areas and to guide reduction of contamination from land-based sources of pollution.

Recommendation:

- 122) *The proposal to authorize environmental objectives and codes of practice is supported.*

Government Response 8.24 - Definition of "Dumping"

The government response calls for amending the definition of dumping to include disposal from wharves and intertidal zones. This is a positive improvement.

The government has not responded to the Standing Committee's recommendation that the definition of "ocean dumping" be expanded to include the destruction and subsequent dumping of manufactured structures such as ships, etc. As discussed previously this amendment would

be consistent with both the administrative practice under CEPA and the London Dumping Convention.

Recommendation:

- 123) *The definition of 'dumping' should be amended to capture both dumping in the intertidal zone and off wharves and to include disposal of ships, and other manufactured structures such as artificial islands and platforms.*

Government Response 8.25 - Creation of a List of Wastes Authorized for Disposal in the Ocean

The government has proposed an exclusive list of authorized material and wastes which may be disposed of in the ocean. The use of an exclusive list is preferable to the existing scheme in Part VI of CEPA. However, the acceptability of disposal of many of the items on the list will depend on the administration of ocean dumping permits. For instance, a recent article in the B.C. Environmental Report was critical of Environment Canada for allowing the sinking of ships containing asbestos and toxic anti-fouling paint. Clear publicly accessible protocols for disposal of all types of waste which can be dumped would help ensure a minimum standard is adhered to. There do not appear to be any clear protocols for disposal of materials other than sediment.

Recommendation:

- 124) *The government should continue with its proposal to use an exclusive list with materials for ocean dumping. However, protocols governing permit issuance for all materials that can be dumped should be developed and made publicly accessible.*

Justifying the Need for Ocean Disposal

The government has committed to examining the final version of the Waste Assessment Framework to ensure that it is accurately reflected through CEPA provisions, and, if not, to make necessary adjustments. The government then states that the final version of the Waste Assessment Framework may include requirements to recycle, reuse or treat waste if opportunities exist to do so.

Recommendation:

- 125) *Either Ocean Dumping Regulations, the text of CEPA or Part III of Schedule III should be amended to clearly require proof that re-cycling, re-use or treatment are unfeasible or unsafe. Clear incorporation of pollution prevention principles should not be dependent on the extent to which they are included in the WAF.*

Government Responses 8.26 and 8.27 - Environmentally Preferable Method

The government also notes that the Waste Assessment Framework may be amended to require a comparative assessment of different disposal options to ensure that ocean disposal is the environmentally preferable option. The recommendation of the Standing Committee was that permit applicants be responsible for proving that ocean disposal was the best option from an environmental perspective.

Recommendation:

- 126) *Permit applicants should be responsible for proving that ocean disposal is the best option from an environmental perspective. This principle should not be dependent on its inclusion in the WAF. Section 71(3) of CEPA should be amended to prohibit issuance of an ocean dumping permit if the Minister is not of the opinion that substances being dumped are either harmless or will rapidly be rendered harmless.*

Government Response 8.28 - Disposal of Contaminated Substances

The government proposes continued consultation on national guidelines for contaminated dredge sediments.

Recommendation:

- 127) *This government should continue its work in this regard, ensuring that long term sub-lethal impacts of contaminants are considered. Adequate resources should be allocated to the quick completion of interim guidelines.*

Government Responses 8.29 and 8.30 - Applicant and Ocean Dumping Fees

The government proposes applicant fees that will cover the cost of evaluating ocean dumping proposals and sliding scale disposal fees. These fees are intended to cover partial or full costs of permitting, pollution prevention and environmental effects monitoring. These recommendations are significant steps forward, although consideration should be given to creating a specific fund for long term monitoring.

Recommendations:

- 128) *The proposals are supportable. However, the government could improve on this commitment by creating a special fund for environmental effects monitoring.*
- 129) *The government should also commit to full cost recovery from fees. Reference should*

be made to Recommendation 29 of this submission for more detailed comment.

Government Response 8.31 - National Ocean Disposal Database

The government intends to develop a national ocean disposal database by 1997 which would be part of the public electronic registry.

Recommendation:

- 130) *The government proposal for the development of a national ocean disposal database is supported. Reference should also be made to Recommendation 31 of this submission for additional comment.*

Government Response 8.32 - Granting of Ocean Disposal Permits - Notification and 10-Day Objection Period

The government proposes that there is a ten day period during which members of the public can file a notice of objection with respect to the issuance of a ocean disposal permit.

The ten day period for the filing of the notice of objection is too short. It should be extended to thirty days. Experience, with other legislation such as Ontario's Environmental Bill of Rights and limitation periods in other provincial legislation indicates that parties are hard pressed to meet thirty day limitation periods. Ten day limitation periods for notices of objection may simply be so tight as to be useless in practice. Indeed the current limitation for ocean dumping permittees filing a notice of objection is thirty days and the limitation period for filing notices of objection in other parts of CEPA are generally sixty days.

Recommendation:

- 131) *The government proposal for the ability for the public to file notices of objection is supported. However, the ten day period is simply too short a time. This period should be extended to thirty days.*

Government Proposals 8.33 and 8.34 - 10 Day Notices

The government proposes to retain the right of an applicant to file a notice of objection, but this notice must be filed in ten days. Where no notices have been filed by either the public or the applicant, the permit would take effect at the end of the ten days.

Recommendations:

- 132) *The period for the filing of all notices of objections should be thirty days.*
- 133) *The permit should take effect after thirty days if no notices of objections have been filed.*

Government Response 8.35 - Refusal by Minister to Issue Permit

The government proposes that notices of objections can be filed by the applicant or the public where there has been a refusal to issue a permit; vary its terms; or revokes or cancels a permit. There is a ten day period to file the notice.

Recommendation:

- 134) *The proposal to permit notices of objections where ocean dumping permits have been refused, varied or revoked is supported. However, the ten day period to file the notices should be extended to thirty days.*

Government Response 8.36 - Convening Boards of Review

The government proposes that CEPA have a requirement that the Minister be required to convene a Board of Review in all the cases where a notice has been filed unless the Minister determines that the objection or objections are frivolous or vexatious.

- 135) *The proposal to require boards of review in certain circumstances is supported.*

Government Response 8.37 - Consideration of Notices

The government proposes the require the Minister to consider all notices of objection and report on how the Minister took the objections into account in making his or her decision.

- 136) *The proposal to require the Minister to consider all notices is supported.*

CHAPTER 9 - CONTROLLING TOXIC SUBSTANCES

9.1 Introduction

Chapter 9 of the government response deals with the proposals for reform of Part II of CEPA - the part of the law that addresses the issue of toxic substances. Essentially, the reforms proposed would slightly increase the number of substances assessed, clarify the interpretation of some of the various provisions within Part II, and incorporate parts of the Toxics Substances Management Plan. Moreover, it is uncertain at best, and probably unlikely, that the proposed reforms will address even the most important weaknesses of current regime. Some of the problems identified under the current law include:

- * the small number of individual substances that are placed on the Priority Substances List (PSL);
- * the failure to complete assessments of the "toxicity" of 13 of the 44 substances placed on the PSL in 1988 within the prescribed 5 year time-frame;
- * the finding of a number of substances known to have toxic properties and to be present in the Canadian environment, such as Toluene and Used Crankcase Oils, not to be "toxic" for the purposes of the Act; and
- * since CEPA came into force only three regulations on toxic substances have been put in place.

9.2 The Recommendations of the Standing Committee

The Standing Committee on Environment and Sustainable Development, in chapter 5 of its report, called for major overall Part II of CEPA. One of its essential themes was a call for the incorporation of the concept of "inherent toxicity" and a revision to the section 11 definition of "toxicity" to accommodate the incorporation of this term (Recommendation 9). To further the inherent toxicity concept, the Committee proposed two mechanisms: first, a new regulation would be established with specific criteria for inherent toxicity and any substance meeting that criteria would be deemed to be toxic (Recommendations 14 and 15). Substances on the Domestic Substances List (DSL) would be evaluated in light of the criteria and if found to meet the criteria, they would be targeted for sunset. An appeal route was given to those that use or generate the substances (Recommendation 16). Second, those substances that have been banned or phased-out in another OECD country or Canadian province would also be deemed to be toxic (Recommendations 13 and 18). Finally the Committee made a number of recommendation to deal with the problem where there is insufficient information to make an assessment within the required five years (Recommendations 20 and 21).

The Committee's recommendations present a bold new direction for CEPA. It is a vision that

implements the Liberal government's commitment to phase-out persistent toxic substances.¹¹⁹

9.3 The Weakness of the TSMP

The proposals for the reform of Part II of CEPA are so confusing that it is difficult to understand either how it will work or its effect. One reason for this confusion is that the government proposals are hinged upon the Toxic Substances Management Policy (TSMP). Since the TSMP is extremely problematic, so too then the government proposals. The TSMP was released for discussion in mid-1994, in the midst of the Parliamentary Review of CEPA. It was finalized and released in June of 1995, a matter of weeks before the release of the report of the Standing Committee on Environment and Sustainable Development.

Environmental organizations were highly critical of the proposed policy. In a document entitled "A Response to the Proposed Toxic Substances Management Policy for Canada" a number of comments were made with respect to the policy.¹²⁰ The highlights of these comments can be summarized as follows:

- * in the proposed definition of virtual elimination is inconsistent with the principles of pollution prevention, the definitions set out by international agencies such as the International Joint Commission and the government's own pollution prevention policy statement, Pollution Prevention: A Federal Strategy for Action;
- * in the definition of "environment" as outlined in the TSMP excludes occupational environment;
- * in the criteria of "predominantly anthropogenic" appears to excludes elements and other naturally occurring substances known to have significant health and environmental effects, such as lead, cadmium, and mercury, from action under the TSMP;
- * in the proposed definition of persistence is inconsistent with the definition of persistence set out by other agencies, including the International Joint Commission, and the definition contained in the Great Lakes Water Quality Agreement;

¹¹⁹ According to the Liberal Plan for Canada, "Timetables must be set for phasing out all use of the most persistent substances." See: Creating Opportunity The Liberal Plan for Canada, p. 66.

¹²⁰ Canadian Institute for Environmental Law and Policy and the Canadian Environmental Law Association, A Response to the Proposed Toxic Substances Management Policy for Canada, Submitted to Environment Canada, November, 1994.

- * in the proposed definition of bioaccumulation is too high and inconsistent with the definitions employed by other agencies;
- * in substances are required to be toxic, persistent and bioaccumulative to be on Track 1. A combination of toxicity and persistent, or toxicity and bioaccumulative should be sufficient to place a substance on Track 1;
- * in the deliberate use and manufacturing of Track 1 substances would be permitted to continue;
- * in there is no commitment to action with respect to Track 2 substances except to encourage voluntary action by users and manufactures of the substances in question; and
- * in no clear procedures are provided for the "reverse onus" appeal process regarding Track 1 substances.

The full submission outlining in detail these criticisms is given in Appendix G.

It is curious and unfortunate that the government decided to release the TSMP when: (a) there was severe criticism of the TSMP during the public consultation, none of which were addressed with the re-drafting of the TSMP; and (2) the government knew or ought to have known that the Standing Committee on Environment and Sustainable Development would be commenting on exactly the same issues addressed in the TSMP. There is an inescapable conclusion that the TSMP was released to pre-empt a more full and comprehensive debate and to thwart the kinds of reforms that were to be forthcoming by the Standing Committee.

The TSMP cannot stand in the way of legislative reform to CEPA, and the kinds of reform needed to address the problems being cause the continued use and release of toxic substances in Canada.

Recommendation:

- 137) *The TSMP as a policy should be reviewed and its fundamental weaknesses which must be addressed in the context of CEPA. The current TSMP should not be a barrier to a more effective CEPA; instead, CEPA should be considered the legislative opportunity to overcome the weaknesses of the TSMP.*

9.4 What is Needed - A Simple, Predictable Method to Identify and Address Toxic Substances in Canada

Chapter 9 of the government's proposal could result in a more complex and less effective regime than the present one depending on how it is interpreted and how it is implemented. What is needed is a clear legislative mandate and process to identify, assess and regulate toxic

substances.

The Standing Committee's recommendations provide a solid framework in this regard although it too could be strengthened. One of the cornerstone concepts found in both the government response and the Standing Committee's recommendations is the recognition of the concept of inherent toxicity - the ability to find a substance toxic owing to its attributes or characteristics, without proof of actual harm through exposure.

The new Part II CEPA regime should be composed of three components:

- 1) in constructing an enhanced Priority Substances List;
- 2) in re-defining the "toxicity" for the purposes of the Act; and
- 3) in applying an enhanced management regime on CEPA "toxic" substances.

9.4.1 Constructing A New Priority Substances List (PSL)

The PSL should be used as a vehicle to identify more substances of concern for the purposes of assessment. In this context, "assessment" should not only refer to risk assessment of substances, but hazard assessment also. To this end, the PSL should consist of the following components:

- (i) all substances on the DSL that meet specified criteria for such characteristics as inherent toxic properties (such as acute lethality, chronic/sub-chronic toxicity, carcinogenicity, teratogenicity, genotoxicity, and the ability to disrupt endocrine systems), persistence and bioaccumulation.¹²¹ This list of characteristic could expand over time as more properties are recognized;
- (ii) substances banned, phased-out or severely restricted in other OECD jurisdictions or in a Canadian province or territory; and
- (ii) other substances identified through the existing PSL nomination process.

The PSL, therefore, would be a considerable longer list of substances than to date. It would contain both substances that have been placed there because of their known properties, because substances have been regulated in another country or province or because they have been identified as priorities for assessment through nominations.

¹²¹ These criteria are drawn from Environmental Leaders 1: Voluntary Commitments to Action on Toxics Through ARET (Ottawa: ARET Secretariat, March 1995), pg. 6.

9.4.2 Re-Defining "Toxicity"

The current definition is a barrier to the appropriate assessment regime for toxic substances. The problem with the current definition is that:

- * evidence is needed of toxic properties, evidence of **entry** into the environment; and **exposure** at a sufficient levels to cause effects and evidence of actual **effects**; and
- * many substances on the PSL with toxic properties were found to be not "toxic" or not assessed due to lack of data regarding **exposure or effects**.

A new definition of toxicity would remove the exposure component of the definition. A proposed definition is given in **Recommendation 143** of this brief pertaining to government proposal 9.5. In effect, it would lower the threshold of proof in the exposure component of the assessment to only require evidence of entry or potential entry into the environment. Evidence of exposure in amounts sufficient to cause effects to the environment, danger to the environment or danger to human life and evidence of actual effects would not be required to establish "toxicity" for the purposes of CEPA.

The implication of a new definition of toxicity is that the concept of inherent toxicity could be implemented. Hence, there would be three ways to have a substance could be found to be toxic:

- 1) it is assessed "toxic" according to the existing risk assessment protocols;
- 2) it could be assessed as being "toxic" on the basis of having inherent toxic properties such as acute lethality, chronic/ sub-chronic toxicity, carcinogenicity, teratogenicity, genotoxicity, or the ability to disrupt endocrine systems; or
- 3) it could be "deemed" toxic on the basis of having been banned, phased-out, or severely restricted in another OECD country or a Canadian province.

A fourth means of finding a substance toxic should also be considered, namely, substances being targetted for action through an international agreement which Canada is a party.

9.4.3 Applying a Management Regime for CEPA "Toxic" Substances

Toxic substances should be dealt with on a two-track system.

- 1) Track 1 Substances: Toxic substances meeting defined criteria, such as persistence and bioaccumulation, specified through a regulation, would be targeted for virtual elimination. Virtual elimination would be defined as the elimination of the manufacturing, use, sale, generation, import, export and release into the environment

of the substance in question in Canada.

- 2) **Track 2 Substances:** All other "toxic" substances. These would be subject to regulatory control within a two-year timeframe. In addition, all "toxic" substances would be subject to requirements for mandatory pollution prevention planning as well.

Recommendation:

138) *CEPA must be provide a clear mandate and structure to address the problem of toxic substances in Canada. To further this goal,*

(i) *there must be an increase in the number of substances assessed and eventually regulated. One of the most important mechanisms to realizing this goal is to develop a methodology for evaluating and eventually regulating classes of substances.*

(ii) *to achieve this goal, CEPA should be amended such that:*

(a) *the PSL is expanded by including:*

- (1) *all substances on the DSL that meet specified criteria such as inherent toxicity, persistence and bioaccumulation. This list of characteristic could expand over time as more properties are recognized;*
- (2) *substances banned, phased out or severely restricted in another OECD jurisdiction or in a Canadian province; and*
- (3) *other substances identified through the existing PSL nomination process;*

(b) *the section 11 definition of "toxic" is amended to*

- 1) *accommodate the concept of assessing substances on the basis of their inherent toxic properties;*
- 2) *to permit substances banned, phased-out or severely restricted in another OECD jurisdiction or in a Canadian Province to be deemed "toxic" for the purposes of CEPA; and*
- 3) *to permit substances banned, phased-out or severely restricted through an international agreement to which Canada is a Party, to be deemed "toxic" for the purposes of CEPA; and*

(c) *establish a regulatory regime with:*

- 1) *a Track 1 for "toxic" substances targeted on the basis of specific*

- 2) *criteria for virtual elimination; and*
a Track 2 for "toxic" substances targeted for less severe regulation but mandatory pollution prevention planning.

While this is the basic model proposed, elaborations of some of the components are outlined in the comments on the specific proposals put forth by the government.

9.5 Comments on the Government's Proposals

9.5.1 Prioritizing Substances for Action

The government response proposes three mechanisms to identify priorities substances for action. Under the proposal, substances can become candidates if (a) they met certain criteria; (b) they have been banned, sunsetted or severely restricted in an OECD country or Canadian province; and (c) they have otherwise been placed on the PSL through the current CEPA nomination process.

Government Response 9.1 - Substances Meeting Persistent or Bioaccumulation or Other Criteria

The government proposes to introduce a number of measures relating to prioritizing substances based on express criteria. More specifically, it is proposed that:

- (a) substances on the DSL would be categorized with respects to persistence or bioaccumulation and inherent toxicity to environmental organisms;
- (b) substances on the DSL with the greatest potential for exposure for Canadian would be categorized; and
- (c) substances categorized would be candidates for screening level risk assessments based on science, which could result in no further action, addition to the PSL or proposal for preventative or control action consistent with the TSMP.

This proposed mechanism to prioritize substances is supportable in principle. The thrust of this proposal is to accept the principle of inherent or intrinsic toxicity. However, it has a number of significant weaknesses which must be addressed. Most importantly, the criteria for inherent toxicity is too narrowly defined. A substance should be a priority for action if it has any array of toxic properties, including, but limited to, persistence, ability to disrupt endocrine systems, among others. The present proposal should include the authority to develop criteria for inherent toxicity, without limiting the authority to the present state of knowledge. Comment on the definition of this criteria is discussed below.

The government proposal intend to categorize substances for the purposes of identifying which substances should be priorities for action. The problem is that there is no requirement that anything has to be done, once identified. It seems that substances can be deemed toxic, placed on the PSL or simply ignored. Why go through this process if the substance, even if meeting the criteria, does not result in any action? Criteria should be identified such that any substance meeting that criteria should be automatically deemed toxic and then targeted for phase-out. Once a substance has been found to meet the criteria, it should be phased out according to an orderly schedule.

Recommendation:

- 139) *It is recommended that criteria should be established that, if met, substances on the DSL will be placed on the PSL. The criteria should include inherent toxic characteristics (such as acute lethality, chronic/ sub-chronic toxicity, carcinogenicity, teratogenicity, genotoxicity, and ability to disrupt endocrine systems) and persistence or bioaccumulative potential.*

Government Response 9.2 - Substances Banned, Sunsetting or Restricted in an OECD Country or a Province

The government response would also identify substances that have been banned, sunsetted or restricted in an OECD country or another province.

Recommendation:

- 140) *CEPA should be amended that substances on the DSL that have been banned, phased-out or severely restricted in another OECD jurisdiction or Canadian province are added to the PSL.*

Government Response 9.3 - Nomination through Existing PSL Development Process

The third mechanism to prioritize substances for action is to continue with the present PSL process.

Recommendation

- 141) *This proposal is supported, except that the thrust of the nomination process should focus on classes of substances rather than individual substances.*

Government Response 9.4 - Conditions for Deletion of Substances from the PSL

The government proposed to clarify that the Minister can only take a substance from the PSL if the substance has been assessed to be toxic or not toxic. This section would remedy the situation where the Minister has taken substances off the PSL that have not been assessed. The fact that the Minister believes that there is unfettered discretion to remove PSL substances that have not been found to be toxic or non-toxic, means that all public remedies and rights can be extinguished by the Minister removing substances. For example, if a substance has been on the PSL for five years or more and has not been assessed, any person can file a notice of objection and demand a board of review.¹²² However, the Minister at this point in time can remove those substances at any time and effectively defeat the public remedy.

Recommendation:

- 142) *The proposal to ensure that the Minister can only delete substances from the PSL if they have been assessed to be toxic or not toxic is strongly supported.*

9.5.2 Deciding Which Substances are Toxic Under CEPA

The government has made a number of proposals to clarify the circumstances as to when a substance is "toxic."

Government Response 9.5 - Definition of Toxicity

The government response makes the assumption that the existing definition of "toxicity" in CEPA is sufficient to incorporate and implement the concept of inherent toxicity. It is respectfully submitted that the current section 11 definition of CEPA is inappropriate and does not fulfil the purposes of CEPA.

Substances may have characteristics or traits that, intrinsically, give them the potential to cause harm to human health and the environment. For example, some substances are "persistent" or "bioaccumulative." Others are suspected of disrupting the endocrine systems of wildlife and possibly humans.

The simple question is this: Do Canadians want substances with these kinds of characteristics to be freely put into commerce or remain in commerce in Canada?

The current section 11 definition, however, does not ask this question. Instead, the conditions precedent to having a substance declared toxic requires that it not only have the potential to

¹²² CEPA, ss. 14 and 89.

cause adverse effects, but that Canadians and their environment are being exposed to these substances in sufficient quantities to cause harm.

The need to establish exposure was a major factor in the finding of PSL substances known to have intrinsic "toxic" properties not to be "toxic" for the purposes of CEPA. Toluene is a good example of this situation where, although the substance has toxic properties, it was not found toxic according to the definition in CEPA. Toluene is listed in virtually every provincial hazardous waste and occupational health and safety regulation in the country.

The exposure requirement in the present definition requires that there be sufficient exposure of a substance in the environment before regulatory action be taken, even if the substance is inherently toxic. Hence, it follows then that it is necessary to wait for harm to occur before preventive measures can be established. By its very nature, therefore, the current definition is in contraposition to the precautionary principle, a principle that the government has expressly endorsed.

In effect, the current definition has defeated the very purpose of Part II of CEPA. Of the 44 substances on the Priority Substances List, as many as 13 of them were not assessed because of insufficiency of data. For many of these substances, the information that was lacking related to exposure data. Hence, the narrow definition of toxicity has made it difficult to determine the toxicity of 13 substances. For five years of effort, the assessment process of Part II has yielded only modest results, mostly because of the incredibly onerous requirements of the toxicity definition.

The definition of "toxicity" must be amended in CEPA to remove the exposure requirement and include the concept of inherent toxicity in order to deal with these problems.¹²³

¹²³ Other aspects of the government's proposal with respect to this issue are problematic. In fact, the proposal is so complex, it is unclear what the intent and effect is, and how it will be implemented. Specifically:

"Risked-Based Decisions:" Although some substances will be found to be "toxic" based on a risk assessment, the incorporation of the concept of inherent toxicity suggests that some toxic substances will be found toxic on the basis of a hazard assessment.

"Relatively Small Number of Substances:" This term is meaningless in the context of the government response 9.5. There is no precise estimation of the number of substances that meet the inherent toxicity criteria since the criteria has yet to be set. Whether it is a large or small number is irrelevant; it depends on what substances meet the criteria and thus should be subject to a phase-out.

"Substances per TSMP Track 1, based on Persistence and Bioaccumulation ..." Once a substance has been identified as toxic based on inherent toxicity, and the criteria is intended to

Recommendation:

- 143) *The definition of toxicity in CEPA should recognize the concept of inherent toxicity. Toxicity should be determined on the basis of the inherent or intrinsic toxic properties of substances such as acute lethality, chronic/ sub-chronic toxicity, carcinogenicity, teratogenicity, genotoxicity, and ability to disrupt endocrine systems. This approach should be reflected in a redrafted CEPA section 11 which would read as follows:*

"For the purposes of this part, a substance is toxic if it is entering or may enter the environment and:

- (a) is having or may have an immediate or long term effect on the environment;*
- (b) constitutes or may constitute a danger to the environment on which life depends; or*
- (c) constitutes or may constitute a danger in Canada to human life or health."*

Government Response 9.6 - Virtual Elimination of Track 1 Substances in TSMP

The government response proposed to legislate in CEPA the virtual elimination of Track 1 substance as set out in TSMP. The overall goal of CEPA should be the phase-out of persistent toxic substances, and any other substance that meet the criteria (such as endocrine disruptors). As such, substances scheduled for phase out should be all those substances that meet the phase-out criteria, which could be broader than the characteristics of persistence and bioaccumulation.

Recommendation:

- 144) *All "toxic" substances that meet established criteria should be scheduled virtual elimination. These criteria may include persistence and potential for bioaccumulation. Other substances may be targeted for virtual elimination in the criteria apart from persistent substances, such as endocrine disruptors.*
- 145) *It should be made clear that toxic substances will be dealt with on two tracks: Track 1 criteria would be defined by regulation, which if met, would target the substance for virtual elimination. All other toxic substances would be Track 2 substances for which*

define those substances for phase-out, those substances should be scheduled for phase-out. Comments on the use of the TSMP are mentioned above. Further, there is a presumption in government response 9.5 that the only inherently toxic characteristics relate to persistence and bioaccumulation. In fact, it may be a whole host of other characteristics, such as those substances that are recognized as endocrine disruptors.

control and prevention measures and mandatory pollution prevention planning would be required.

Government Response 9.7 - Definition of Virtual Elimination

The government response proposes to define virtual elimination in the same way as it is defined in the TSMP. According to the proposed TSMP, the definition of virtual elimination is "no measurable release" into the environment.

The TSMP definition of virtual elimination should be rejected. There are a number of reasons which support the rejection of the proposed definition.

The Proposed Definition is Inconsistent with the Concept of Pollution Prevention

The "no measurable release" definition of virtual elimination promotes a pollution control approach rather than a pollution prevention approach. No "measurable release" gives legitimacy to continuing pollution control techniques that attempt to reduce emissions at the end-of-the-pipe to the non-detectable level rather than focusing up-the-pipe process change. This approach will force industry to invest in much more expensive, and ultimately less efficient, end-of-the-pipe measures. These investments will preempt other pollution prevention investments. In effect, these facilities will be held "hostage" to traditional pollution control technologies rather than pursuing pollution prevention strategies. The definition of virtual elimination should focus on pollution prevention activities that avoid or prevents the use and generation of toxic substances. Its strength is that it emphasizes changes in the industrial process through such techniques as raw product substitution, process reformulation, substitution, among other such techniques.

It Will Lead to Endless Debates as to the Definition of What is "No Measurable Release"

Apart from the general concern, there are also practical problems of trying to define what is meant by "no measurable release." Most important, who will define what is the "not measurable" limit? How will that limit be set? What happens if detection technology improves? The reality is that the determination of what is the "no measurable release limit" will be more difficult to implement in practice than a definition based on pollution prevention.

It is Inconsistent with the International Joint Commission's Definition of Virtual Elimination

In its Seventh Annual report, the International Joint Commission (IJC) re-iterated its previous approach and views and states:

we...want to continue attempts to **manage** persistent toxic substances after they have

been produced or used, or ... **eliminate** and **prevent** their existence in the ecosystem in the first place, ... Since it seems impossible to eliminate discharges of these chemicals ..., a policy of **banning** or **sunsetting** their manufacture, distribution, storage, use and disposal appears to be the only alternative.¹²⁴

Further, the Commission noted:

We know that it is impossible to achieve that objective -- virtual elimination and restoration of integrity -- if we continue to input those persistent toxic substances generated by human activities.... Zero discharge means just that: halting all inputs from all human sources and pathways to prevent any opportunity for persistent toxic substances to enter the environment as a result of human activity. To prevent such releases completely, their manufacture, use, transport and disposal must stop; they simply must not be available. Thus, zero discharge does not mean less than detectable.¹²⁵

The Commission has implicitly rejected the "no detectable level" definition for virtual elimination.

The Proposed Definition is Inconsistent with the Document - Pollution Prevention: A Federal Strategy for Action

In its July 1995 policy statement, Pollution Prevention: A Federal Strategy for Action, the federal government committed to the pollution prevention approach. The definition of virtual elimination to include "no measurable release" is contrary to this policy statement.

Recommendation:

- 146) *The concept of defining "virtual elimination" as "no measurable release" should be rejected. Virtual elimination should be defined as the elimination of use, manufacturing, sale, import, export or release into the environment of the substance in question.*

¹²⁴ International Joint Commission, Seventh Biennial Report to the Governments of Canada and the United States (Ottawa-Washington, 1994), p. 26.

¹²⁵ International Joint Commission, Sixth Biennial Report on Great Lakes Water Quality, 1992, pp. 16-17.

Government Response 9.8 - Deeming Toxic Substance Banned, Phased-Out or Restricted in OECD Countries or Provinces

The government proposes to deem toxic those substances that have been banned, phased-out or severely restricted in other OECD countries or provinces. This is a very positive proposal that should be supported.

Recommendation:

- 147) *It is recommended that government proposal 9.8 be implemented. Substances deemed "toxic" in this manner should be targeted for action at least as stringent that taken in the jurisdiction in which they have been banned, phased-out or severely restricted.*
- 148) *It is recommended that CEPA be amended to permit substances targetted for action through international agreements to which Canada is a Party, to be deemed "toxic" for the purposes of the Act.*

Government Response 9.9 - Requirement for Further Information Gathering

The government proposal to strengthen the information gathering provisions of CEPA is strongly supported. Those interests that will produce, generator, use or release these substances should take increased responsibility for information gathering, including additional testing.

Recommendation:

- 149) *It is recommended that government proposal 9.9 be implemented.*

Government Response 9.10 - Where there is Insufficient Information for the Determination of Toxicity

The government proposal to establish a time frame to complete assessments, even where there is a lack of information, is a positive step and a proposal that should be supported. This proposal will assist in avoiding the problem that occurred in the context of the first round of the PSL where the assessment for 13 substances could not be completed.

Recommendation:

- 150) *It is recommended that government proposal 9.10 be implemented.*

9.5.3 New Substances

Government Response 9.11 - Mandatory Reporting of Significant New Uses

The government proposes to amend to CEPA enable the ministers to require the mandatory reporting of significant new uses of substances which have been through the new substances notification and assessment process, as a means of ensuring the continuing safety of the substance in light of the change in use pattern.

Recommendation:

- 151) *CEPA should be amended to require the reporting of significant new uses of substances.*

Government Response 9.12 - Accountability Provisions for New Substances

The Standing Committee made a number of recommendations to improve accountability in the new substances assessment process (Recommendation 113). In its response to the Committee's report, the government rejects these proposals on the basis of the "overriding need for rapid decision-making." Instead, the government makes reference to the scheduled review of the New Substances Notification Regulations. Given the extremely limited information available to the public regarding new substances and their assessment, it is unlikely that this review process will produce significant results. In effect, the government is placing the need for rapid decision-making over the need of accountability to Canadians regarding the new substances which may enter their environment and affect their health each year.

Recommendation:

- 152) *CEPA should be amended to provide for the following additional public accountability mechanisms in the new substances assessment process:*

i) *Public Notice:*

- (a) *notification, in the Canada Gazette, and/or on the proposed public registry, when notification information packages are received by Environment Canada and Health Canada regarding new substances; and*
- (b) *notification, in the Canada Gazette, and/or on the proposed public registry when field tests involving the open environmental release of a new substance are proposed.*

In both cases, public notices should be followed by public comment periods of not less than sixty days.

ii) *Appeals:*

CEPA should be amended to allow the filing of a notice of objection with respect to:

- * the addition of substances to the DSL (i.e., a finding of not "toxic" or "suspected of being toxic");*
- * the waiving of information requirements;*
- * the approval with conditions or when prohibitions or conditions regarding substances suspected of being "toxic" are varied or rescinded; and*
- * the approval of field tests of new substances, particularly those involving open release into the environment.*

Boards of Review should be required to be established unless the request can be shown to be frivolous or vexatious, approvals should be suspended until any notice of objection is resolved, and intervenor funding should be provided to bona fide public interest intervenors.

iii) *Public Access to Information*

Public access to information submitted in response to new substance notification requirements should be provided in a manner consistent with the principles outlined in this submission with respect to information regarding products of biotechnology (Recommendation 97).

Government Response 9.13 - By-Products, Contaminants and Impurities

The government proposes to review the need for further information regarding requiring information with respect to the by-products of the use, manufacturing, storage, or release into the environment of new substances.

Recommendation:

- 153) *CEPA should be amended to remove the exemption contained in Section 26(3)(d) of the Act regarding by-products of the use or storage of a substance or the impacts of environmental factors on a substance.*
- 154) *The potential human health and environmental effects of by-products of the use, manufacturing, storage or the impacts of environmental factors on a substance should be considered in the assessment of new substances.*

9.5.4 Managing Risks Posed by Toxic Substances

Government Response 9.14 - Incorporation of TSMP Provisions

The government proposes to incorporate the key elements of TSMP. As noted above, this approach is not supported. In designing CEPA, innovations should not be restricted to those in the TSMP.

The two year time frame suggested in this proposal is too general. One year is more appropriate. Further, substances that are CEPA toxic should be scheduled for regulatory action within the one year time frame.

Further, for Track 1 substances, there should be authority for the Minister to require transition plans to ensure that workers and communities are not inequitably affected by the move to cleaner technologies.

Recommendation:

155) *It should be made clear that there will be two tracks for managing "toxic" substances: Track 1 criteria would be defined by regulation, which if met, would target the substance for virtual elimination. All other substances would be Track 2 substances that would require regulatory control and mandatory pollution prevention planning. There should be authority give under CEPA for the development of transition plans in specified cases.*

Government Response 9.15 - Stopping the Clock for a Board of Review

The "stopping the clock" provision upon the granting of a board of review is supportable.

Recommendation:

156) *It is recommended that government proposal 9.15 be implemented.*

Government Response 9.16 - Onus on Industry for Evidence that Toxic Substance Should Not be On Track 1

The government proposes that industry be given the opportunity to challenge whether substances should be targeted for virtual elimination.

Concern is expressed over this proposal. Unless it is carefully worded with a large number of qualification, the section has the potential to be constantly used as a means to challenge and delay the operation of CEPA. Moreover, there is ample opportunity for industry to submit

data and information within the context of the CEPA process to challenge the information upon which decisions are made, and appeal routes regarding the determination of a substance as toxic, and proposed regulatory actions already exist in CEPA.¹²⁶

Recommendation:

- 157) *Government proposal 9.16 should not be implemented as there are many opportunities for industry to submit information and data in support of their position.*

Government Response 9.17 - Authority for Minister to Require Information for "Toxic" Substances

The government proposal to have the authority to require additional information for substances found to be toxic is supported.

Recommendation:

- 158) *It is recommended that government proposal 9.17 be implemented.*

Government Response 9.18 - Control Measures in Place within 18 Months

The government proposal to have controls in place within 18 months of the publication of control proposals is too generous. A one year time frame is more appropriate.

Recommendation:

- 159) *It is recommended that CEPA be amended to require that control measures be in place within one year of the publication of the control proposals.*

¹²⁶ CEPA, s.48(2).

CHAPTER 10 - GOVERNMENT OPERATIONS AND FEDERAL LANDS

10.1 Introduction

CEPA's "Federal House" provisions (Part IV) have been widely criticized as having been among the least effective components of the Act.¹²⁷ The government proposes comparatively minor amendments to these provisions of the Act, despite the strong support for the Standing Committee's proposals from a wide range of non-governmental stakeholders, including industry.¹²⁸

10.2 Comments on the Government's Proposals

Government Response 10.1 - New Title for Part IV

The government proposes the title "Government Operations, Federal Lands, and Aboriginal Lands" to replace the current title of Part IV of CEPA.

Recommendations:

- 160) *Part IV of CEPA Should be retitled Government Operations and Federal Lands.*
- 161) *Environmental Protection on Aboriginal Lands should be dealt with through a new part of CEPA.*

Government Response 10.2 - Federal Lands

The government proposes to provide separate definitions for "federal lands" and "aboriginal lands." As noted in 2(I) environmental protection on "aboriginal lands" should be dealt with through a new part of CEPA to reflect the unique situation of such lands.

¹²⁷ See, for example, Environment Canada Evaluation of the Canadian Environmental Protection Act: Final Report (Ottawa: Environment Canada, 1993); K. Fisher, "CEPA and the Federal House in Order," in M. Winfield, ed., Reforming the Canadian Environmental Protection Act; and House of Commons Standing Committee on Environment and Sustainable Development, It's About Our Health!, Chapter 11.

¹²⁸ See, for example, Preliminary CCPA Submission and Analysis of the Report of the House of Commons Standing Committee on Environment and Sustainable Development: It's About Our Health! - CEPA Revisited (Ottawa: Canadian Chemical Producers Association, July 1995), p. 26.

Recommendation:

- 163) *"Federal Lands" should be defined for the purposes of the Act as proposed in the Government Response.*

Government Responses 10.3 and 10.4 - Regulation Making Authority

Scope of Regulatory Authority

The government proposes to amend CEPA to ensure that it encompasses all federal entities, lands and operations as well as tenants occupying federal lands. A separate section may be added to provide regulatory authority in relation to Crown Corporations.

Recommendation:

- 164) *CEPA should be amended to ensure that the regulatory authority in Part IV encompasses all federal entities, lands and operations as well as tenants occupying federal lands. Clear regulatory authority in relation to federal Crown Corporations should also be provided.*

Range of Activities Regulated

The government proposes to include in a revised CEPA the authority to make environmental regulations to protect the environment with respect to the conduct of federal activities, regardless of their type or aspect.

Recommendation:

- 165) *CEPA should be amended to ensure that it includes the Authority to make regulations to protect the environment with respect to the conduct of federal activities, regardless of type or aspect, including the examples provided in the government response.*

Paramount of CEPA Regulations

The current provisions of CEPA only permit regulations to be made under Part IV of CEPA if the authority to make the necessary regulations does not exist under another Act of Parliament (CEPA section 54(1)). This issue is not addressed in the government response.

Recommendation:

- 166) *CEPA should be amended to remove the limitation that there be no authority for*

regulations to be made regarding an environmental protection matter under another Act of Parliament before regulations can be made under Part IV of CEPA. A at minimum CEPA should be amended to permit regulatory action under s.54 where no regulations regarding an environmental matter have been made under another Act of Parliament.

Government Response 10.5 - Regulation Making Process

The government states that affected ministers, who have specific authority for lands, works or undertakings, be fully consulted before regulations are proposed to the Governor in Council for approval under Part IV of CEPA. It is unclear if the intention is to remove the current requirement of CEPA for the concurrence of affected Ministers before the Minister of the Environment can propose CEPA Part IV regulations to the Governor in Council.

Recommendation:

- 167) *The existing requirement for ministerial concurrence under section 54 of CEPA should be eliminated.*

Government Response 10.6 - Other Tools

The government proposes to incorporate into CEPA authority to develop codes of practice and environmental quality objectives as well as guidelines for operations of the "federal house" and in relation to activities on federal lands.

Recommendation:

- 168) *CEPA should be amended to provide authority to the Minister of the Environment to develop codes of practice and environmental quality objectives for operations of the "federal house" and in relation to activities on federal lands.*

Government Response 10.7 and 10.8 - Priorities for Closing the "Regulatory Gap"

Priorities for Regulations

The government proposes to prioritize the regulation of federal activities which could result in emissions or other releases that threaten the surrounding community.

Respect for Intent of Comparable Provincial and Territorial Environmental Protection Requirements.

The government proposes to respect the intent of comparable provincial and territorial environmental protection requirements. The federal government could incorporate by reference standards outlined in provincial and territorial regulations into regulations made under Part IV.

Recommendations:

- 169) *As an interim measure to deal with the existing gaps with respect to the environmental regulation of federal entities, CEPA should be amended to permit the adoption by reference of relevant provincial and territorial environmental standards. Should the regulatory regime of a particular province or territory be incomplete, gaps should be filled by reference to the highest standards adopted in other jurisdictions.*
- 170) *CEPA should be amended to permit the Minister of the Environment to make orders for the purpose of protection of the environment with respect to federal government operations and on federal lands, in the absence of regulations made for this purpose by the Governor-in-Council. Such orders should be legally binding instruments. At a minimum, the interim order powers, contained in section 35 of CEPA, should be expanded to apply to federal government operations and federal lands. This is necessary to deal with emergency situations where there is a need for immediate action to avoid serious and/or irreversible harm to the environment.*

10.3 Conclusions

It is clear that there are serious problems with Part IV of CEPA. The government's proposals do not adequately address these concerns. CEPA should be amended to ensure that Part IV provides the authority necessary to deal with the environmental aspects of all federal entities and activities on federal lands. In addition, Part IV should be amended to establish CEPA as the paramount federal legislation with respect to environmental protection on federal lands and in relation to federal activities, and to remove the requirement for ministerial concurrence from section 54 of the existing Act.

In addition, CEPA Part IV should be amended to provide for the adoption by reference of provincial or territorial environmental standards. It should also be amended to provide authority to the Minister of the Environment to make orders necessary to ensure environmental protection on federal lands and in relation to federal activities, which are not addressed through regulations made under CEPA Part IV, or regulation made through another Act of Parliament. Environmental Protection on aboriginal lands should be dealt with through a new separate Part of CEPA.



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GERALD W. DOUCET

President and Chief Executive Officer
Président et Chef de la direction

March 15, 1996

Honourable Sergio Marchi
Minister of the Environment
10 Wellington Street, 23rd Floor
Les Terrasses de la Chaudière
Hull, Quebec K1A 0H3

Dear Minister:

Thank you for the opportunity to review the Government's Response to the recommendations of the Standing Committee on Environment and Sustainable Development in its report "It's about our Health! Towards Pollution Prevention".

Directionally, CGA is not opposed to the general content of the report. We do agree that environmental policy and legislation should be based on the sustainable development concept and that both environmental and economic considerations should be factored into revisions to the Canadian Environmental Protection Act. Our comments focus on issues that directly affect our member companies.

Chapter 1 - Guiding Principles

We encourage the federal government to strengthen negotiations with the provinces as environmental problems know no boundaries. Increasingly they are inter-regional, ecosystemic or global in nature. Working with the provinces is the most efficient and cost-effective means of protecting our environment. It is essential that industry and other stakeholders continue to be consulted on issues arising from these negotiations, or other planned positions such as may arise from the recommended strengthening of leadership through the new CEPA.

Chapter 2 - Administration Tools

Advisory Committees:

CGA recognizes the need for administrative tools such as a CEPA National Advisory Committee to advise the Minister on environmental matters. However, other committees under principle 2.4 must be appointed so that industry and other interest groups are continually consulted.

Equivalency and Administrative Agreements:

CGA welcomes all intentions to negotiate harmonization of federal and provincial laws as long as the public is notified and has opportunities to comment as per principle 2.8.

Therefore, we agree with principle 2.5 that makes reference to extending the administrative and equivalency agreements contained in CEPA. Any additional steps taken to avoid duplication/overlap between governments will be applauded by industry.

Economic Instruments:

The use of economic instruments for emissions is an innovative means of protecting the environment, but it is difficult to determine the full impact they may have without having more information on the costs and benefits to industry and how these instruments will be allocated and applied.

The federal government should promote voluntary approaches as the preferred methods to address such issues as air quality management for greenhouse gas emissions. Our members have been unanimous in their support of the Voluntary Challenge Program, covering 88% of all natural gas distributed in Canada and well over 90% of Canadian transmission volumes of natural gas. A copy of CGA's response to the Voluntary Challenge and Registry is enclosed for your perusal.

The activities undertaken and planned are indicative of those that can produce results through voluntary means. While CGA members have made a good start, it must be recognized that significant progress will take time. A sustainable approach is necessary for long-term benefits to be recognized. Self-regulation is a viable option.

Chapter 3 - Public Participation

Public access to information held by national authorities is critical to the system, but there must be mechanisms to protect industry trade and proprietary information and commercially sensitive information.

If the proposed amendments are to include the right for a citizen to sue a party for violating CEPA, the amendments need to have safeguards to prevent "professional litigants" from abusing the right for personal gain (i.e. by starting actions and settling out of court for large sums of money).

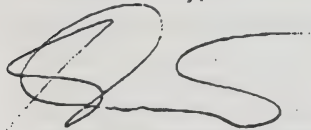
Honourable Sergio Marchi
March 15, 1996
Page 3

Chapter 6 - Pollution Prevention

On page 48, the paper discusses environmental emergencies (i.e. spills, leaks and other incidents which damage or threaten to damage the environment). CGA realizes that CEPA is well suited to deal with environmental aspects of emergencies. However, any amendments to the Act should not duplicate current federal and provincial mechanisms in place to report or resolve environmental emergencies. CGA member companies are already regulated in the areas of prevention, preparedness, response and recovery by the National Energy Board or other provincial regulatory boards such as the Ontario Energy Board as well as provincial environmental agencies. CGA continues to advocate regulatory harmonization of reporting requirements to decrease the administrative burden on industry.

Thank you again for the opportunity to review your report. If I can offer further information on the above, don't hesitate to contact me.

Yours sincerely,



Gerald Doucet

GWD:jlk

cc: Honourable David Charles Dingwall, Minister of Health
Honourable John Manley, Minister of Industry
Honourable Anne McLellan, Minister of Natural Resources
Honourable Stéphane Dion, Minister of Intergovernmental Affairs



President/Président

Robert White

Secretary/Treasurer

Secretary/Treasurer

Dick Martin

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Nancy Riche

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Jean-Claude Parrot

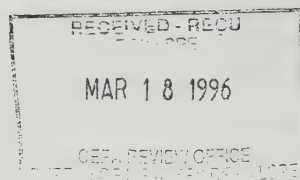
(TLC-CCL)
(CMT-CCT)

40th
anniversary
anniversaire

March 12, 1996

(1956-1996)

The Honourable Sergio Marchi
Minister of Environment
House of Commons
Room 509, Confederation Building
Ottawa, ON K1A 0A6



Dear Mr. Marchi,

I want to thank you for listening to the views of labour and the wider environmental movement at our meeting on February 23. One of the biggest public issues which you will face as Minister of the Environment is the quality of the revisions to the Canadian Environmental Protection Act (CEPA). I offer you the Canadian Labour Congress's comments on the government's Response to the Report of the Standing Committee on Environment and Sustainable Development (CEPA), public notice of which was published on December 14, 1995.

Overall, the government's Response to the Committee's Report of June 1995 is disappointing. These comments are in two parts: a commentary on the government's proposal on the central issue of Pollution Prevention and comments on other issues in the government's Response.

1] POLLUTION PREVENTION

Both the Committee and the government have said that the focus of national environmental policy should be Pollution Prevention; but the government's Response expresses no real or central commitment to an effective programme. The government has ignored the representations made by labour and the wider environmental movement in the Final Report of the Pollution Prevention Legislative Task Force, September 1993.

The federal government's pollution prevention policy, as expressed in its proposals of December 1995, is driven, or circumscribed by, a number of "candidate substances". Just how many substances is not clear, since the government's proposals on revisions to "CEPA-toxicity" are also unclear. But it seems likely that pollution prevention obligations will apply only to the handful of substances listed as Track 1 in the Toxic Substances Management Policy.

Even then, the pollution prevention requirements are feeble, very far from eliminating or phasing out the candidate substances. Pollution prevention requirements will be qualified by economic factors (page 45) and businesses will be allowed to complement the focus on pollution prevention with "reuse and recycling, control and treatment, and safe disposal, as appropriate".

This will effectively destroy the effectiveness of a pollution prevention programme, as was pointed out by the environmental representatives in the Legislative Task Force Report. This qualifier also contradicts the letter and the spirit of the government's policy in Pollution Prevention, A Federal Strategy for Action, June 1995, in which pollution prevention is rigidly separated from control measures and off-site recycling. Overall, the qualifier represents the undue influence on the government of the chemical producing industry, which has opposed every single constructive move over Pollution Prevention over the past five years. The voices of labour, environmentalists, and chemical using industries have been ignored.

The government's proposals for Model Pollution Prevention Plans will be merely a guideline. In the absence of a regulation specifying criteria for (inherent) toxicity, persistence and bioaccumulation, there will also be no method of evaluating the alternatives to substances subjected to pollution prevention planning. Nor does the government specify the circumstances under which pollution prevention plans will become public (see page 46).

The government is (or ought to see itself as) at a crossroads. One option would be to drastically increase the number of substances to which Pollution Prevention planning applies and to make the planning requirement much more effective and onerous. If the government is not prepared to do this, it should thoroughly review its approach to Pollution Prevention and look for an entirely different approach to a national programme. This would acknowledge that a substance-by-substance driven approach to Pollution Prevention cannot be effective, i.e. it cannot constitute a proper Pollution Prevention focus or a national policy worth the name.

The federal government's first role would be to institute Pollution Prevention requirements in all federally-regulated workplaces, e.g., those covered by the Canada Labour Code. We need legislation along the lines of the Massachusetts Toxics Use Reduction (TUR) Law and similar legislation in Oregon and New Jersey. The second phase would be to institute a "loop tax" (dedicated revenue) on toxic chemicals used by businesses above a certain threshold of quantity and quality. The revenues of this tax would be spent on financing a National Pollution Prevention Institute, comprising federal, provincial and territorial governments, plus representatives of labour, the wider environmental movement and chemical user companies. The revenues would also be paid back to those provinces and territories which adopted a legislated Pollution Prevention programme meeting the standards of the federal model, for the purposes of administering the standard within their jurisdiction. While the details of such a tax need to be worked out, it should raise from \$20,-100 million dollars a year for the purposes of administering a national Pollution Prevention programme.

If such a scheme were adopted, the federal government could claim with full justification that

If such a scheme were adopted, the federal government could claim with full justification that it was the national leader in the implementation of an effective Pollution Prevention Programme, setting a tangible example within its own jurisdiction of federally-regulated industries and using an economic instrument to ensure that its standards were truly national in scope. None of this can be said about the government's current stance and approach.

The environmental movement is constantly being asked to provide alternatives to the current regulatory approach. Well, we are now doing so and we are proposing a blend of regulatory and economic approaches which conform to the government's declared policy of using regulatory, fiscal and "voluntary" tools in achieving a national environmental protection policy. It is likely that you will receive similar proposals from the environmental movement generally.

2] OTHER IMPORTANT ISSUES

The proposals for the National Pollutants Release Inventory are welcome; though we need a threefold Inventory covering (i) emissions; (ii) offsite recycling data; and (iii) chemical use data, so that we can evaluate the effectiveness of Pollution Prevention at the national level. It is deplorable that the lack of a proper statutory basis for the NPRI has enabled the government to succumb to the pressure of the chemical producing industry in eliminating the second category of the existing Inventory.

The proposals for more effective enforcement and for whistle-blower protection are also welcome; the latter needs to be complemented by the right of workers to refuse any work which would violate CEPA or any of its regulations. The review on the Notification of New Substances Regulations needs to look at the consequences of relaxing the "quantity triggers" for Notification requirements, which violated the agreement on Notification in the Report of the Consultative Committee on the Environmental Contaminants Act (1986).

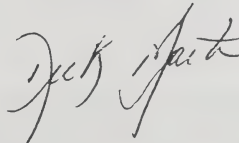
On the environmental aspects of emergencies (Prevention, Preparedness, Response and Recovery) the government's seems to want to move in a welcome new direction. But its intentions are unclear. What is needed is a form of action expressed in Article 4 of the International Labour Organization (ILO) Convention Concerning the Prevention of Major Industrial Accidents (1993), mentioned in the government's response:

1. In the light of national laws and regulations, conditions and practices, and in consultation with the most representative organizations of employers and workers and with other interested parties who may be affected, each Member [state] shall formulate, implement and periodically review a coherent national policy concerning the protection of workers against the risk of major accidents, taking account of their effects on the public and the environment.

2. This policy shall be implemented through preventive and protective measures for major hazard installations and, where practicable, shall promote the use of the best available safety technologies.

This would not necessarily change the current roles and responsibilities for emergencies of the federal government, the provinces, the territories, municipalities and employers; but it would ensure that there is a proper national plan for the prevention and remediation of emergencies and it would ensure that such a plan was properly implemented.

Yours sincerely,



Dick Martin
Secretary-Treasurer

DM:ed*opeiu-225

cc: Honourable Alfonso Gagliano, Minister of Labour & Leader of the House Commons
Karen Kraft-Sloan, MP, Parliamentary Secretary to the Minister of Environment
The Honourable C. Caccia, MP
M. Cappe, Deputy Minister
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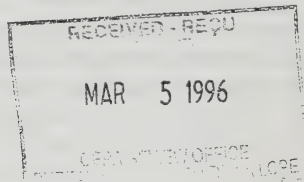
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February 28, 1996

CEPA Office
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Place Vincent-Massey
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K1A 0H3



Dear Sirs:

Re: "Environmental Protection Legislation Designed for the Future - A Renewed CEPA, The Government response to the Standing Committee on Environment and Sustainable Development Report on CEPA."

CMMA is a national trade association which represents the interests of Canadian companies engaged in the manufacturing and distribution of all manner of recreational marine products in Canada. Our membership includes those companies engaged in the provision of engines to pleasure craft builders and users. Thus it is necessary for CMMA to comment on the proposed CEPA revisions.

CMMA would like to request that certain wording contained in "Chapter 8. Controlling Pollution and Wastes" be amended. Specifically we are referring to Section 8.8 under the heading Motor Vehicle Emissions. Point #1 currently reads "new off-road vehicles such as farm and construction equipment, and pleasure crafts." We would like to recommend that the wording be changed to read as follows:

"New off-road vehicles such as farm and construction equipment, and pleasure craft as defined by the Canada Shipping Act."

In our opinion this would provide a better definition of the type of products to be covered and would bring the CEPA changes parallel to the Canada Shipping Act with which we are familiar.





- 2 -

These are the only changes which we feel are necessary at this time.

Should you wish further information about our industry or if we can be of further assistance in this matter please contact the undersigned directly. In the event that further consultation is necessary we request that we be formally advised as we may wish to make a presentation at that time.

Yours truly,

A handwritten signature in cursive script, appearing to read "J. A. Currie", written over a horizontal line.

Mr. J. A. (Sandy) Currie
Executive Director

cc: Mr. R. Anthony Rinaldi, Environment Canada
Mr. Todd Shaphren, Mercury Marine Limited
Mr. Roy Montgomery, Mercury Marine Limited
Mr. Fernando Garcia, Bombardier Inc.
Mr. Bryan Down, OMC of Canada Ltd.
Mr. Chris Goulder, Volvo Penta Canada, Inc.
Mr. Robert Weatherseed, Honda Canada Inc.
Mr. Douglas Stewart, Suzuki Canada Inc.
Mr. Tim Kowall, Yamaha Motor Canada Ltd.
Ms. Jennifer Pharris, Nissan Marine & Power Products
Mr. John McKnight, National Marine Manufacturers Association



CANADIAN NURSES ASSOCIATION
ASSOCIATION DES INFIRMIERES ET INFIRMIERS DU CANADA
MINISTER OF
THE ENVIRONMENT



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File: 483-1

21 March 1996

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MAR 25 1996

ENVIRONMENT CANADA
ENVIRONNEMENT CANADA

The Honourable Sergio Marchi, P.C., M.P.
Minister of the Environment
Terrasses de la Chaudière
10 Wellington Street
Hull, Québec
K1A 0H3

0-1085-1
0-1165-36/5157

139083

Dear Minister

On behalf of the President, Eleanor Ross, and the Board of Directors of the Canadian Nurses Association (CNA), we urge you to strengthen the *Canadian Environmental Protection Act*. The CNA believes that the federal government should assume a strong leadership role in assuring the highest standards for environmental protection for Canadians.

The CNA believes that a healthy environment is fundamental to life. The well-being of individuals, families and communities is dependent on a favourable physical, psychological, social, ecological and economic environment. As health professionals, we know that attention to the effect of the environment on human health is imperative if we are to attain the goal of health for all.

We would like to bring to your attention a policy statement supported by the Canadian Nurses Association and the Canadian Medical Association that calls for stricter legislation to reduce carbon dioxide emissions and ban the use of CFCs before the end of the century. The CNA also calls for the initiation of pricing policies that reflect the full environmental costs of goods and services and that provides incentives to promote the use of more energy efficient technologies and non-polluting energy sources. I have attached a copy of the statement for your information.

TO ADVANCE
THE QUALITY OF
NURSING IN THE
INTERESTS OF THE
PUBLIC

FAIRE PROGRESSER
LA QUALITÉ DES
SOINS INFIRMIERS
DANS L'INTÉRÊT DU
PUBLIC

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CANADA
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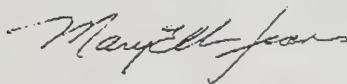
The Honourable Sergio Marchi, P.C., M.P.

Page 2

21 March 1996

I am sure you will recognize that we all have a role to play. CNA continues to encourage its members to achieve environmental responsibility. We look forward to your response to our concerns.

Sincerely

A handwritten signature in cursive script, appearing to read "Mary Ellen Jeans".

Mary Ellen Jeans, R.N., Ph.D.
Executive Director

cc: Canadian Environment Network

Attach.

CANADIAN
PAINT &
COATINGS
ASSOCIATION

L'ASSOCIATION
CANADIENNE
DE L'INDUSTRIE
DE LA PEINTURE
ET DU REVÊTEMENT



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March 15, 1996

138871

The Honourable Sergio Marchi
Minister of the Environment
Terrasse de la Chaudière
28th Floor
10 Wellington Street
Hull, Québec
K1A 0H3

Rec'd - DCU - DOE

MAR 21

Reçu - UCM - MDE

0-1025-1
0-1165-36/5157

Honourable Minister:

On June 13, 1995, the House of Commons Standing Committee of Environment and Sustainable Development tabled its report on the *Canadian Environmental Protection Act* (CEPA) entitled: *It's About our Health: Towards Pollution Prevention*. In December 1995, the *Government Response to the Standing Committee of Environment and Sustainable Development* was tabled in the House of Commons.

The Canadian Paint and Coatings Association (CPCA) participated in the review of the Act as early as 1993 when representatives from the Association attended a two-day workshop session that focused on the examination of a range of theme and policy issues which had emerged since 1988. Following that session CPCA presented comments on behalf of the paint industry, in December 1993. CPCA also submitted comments before Environment Canada on its *Proposed Policy on Toxic Substances Management* in November 1994.

With the publication of the *Government Response to the Standing Committee of Environment and Sustainable Development*, CPCA felt obligated to review its content in order to determine whether the Association's view represented in the two documents referred to earlier had been taken into account.

We have now completed our review of the document and wish to provide you with the following comments on behalf of our members. These are presented more fully in our Submission of comments included with this letter.

First, we would like to state that we are much more comfortable with the *Government Response* than we were with the *Standing Committee of Environment and Sustainable Development's Report*. However, some of the elements contained in the *Government Response* raise some concerns.

The Honourable Sergio Marchi
Minister of the Environment
March 15, 1996
Page Two

The present CEPA is the result of numerous multi-stakeholder consultations. One of the aspects of the Act is the control of exposure of hazardous substances in order to protect both the public and the environment. This has been the agreed-upon approach from the beginning, an approach that considers both hazard assessment and risk assessment.

This approach recognizes that even if a substance is toxic, it is not harmful to the public or to the environment if neither has had exposure to it. Thus controlling the exposure is fundamental to an effective environmental program, a program that also allows technology to advance in tune with our other trading partners. It is also worthy to note that the *Toxic Substances Management Policy* (TSMP) embrace risk assessment as an integral part of the total assessment process. The *Government Response* does not always reflect that governmental policy.

The government proposal to incorporate the precautionary principle in the Preamble to CEPA and, more importantly, the proposed definition of that principle raises serious concerns. In our view, precautionary measures should only be taken when there is scientific justification.

CPCA agrees that a shift away from pollution control and end-of-pipe solutions towards pollution prevention is desirable and needs to be encouraged. However, we find inappropriate, the narrow toxic use reduction (TUR) approach to pollution prevention focusing on preventing the generation and use of substances. We have already offered in a previous submission of comments on CEPA that the definition of pollution prevention should include all activities that minimize or prevent the release of harmful substances, including activities that promote on-site, out-of-loop recycling, reuse and reclamation as well as off-site recycling, reuse and reclamation. Industry should have the choice of tools to prevent pollution.

In a world of globalization the federal government, and especially Environment Canada, has a key role in ensuring harmonization of Canadian environmental regulations with that of other countries. Harmonization of legislation and regulations with that of other countries does not mean, however, merely adopting the most stringent regulations. Other factors such as climate, social and economic impact -- including implementation and operating costs both to government and industry must be taken into account.

We appreciate the opportunity to offer these comments and would be pleased to provide further detail.

Respectfully yours,

A handwritten signature in dark ink, appearing to read 'Perreault', with a stylized flourish at the end.

Jacques Perreault
Vice President, Administration

SUBMISSION OF COMMENTS
ON THE GOVERNMENT RESPONSE
TO THE RECOMMENDATIONS
OF THE STANDING COMMITTEE OF
ENVIRONMENT AND SUSTAINABLE DEVELOPMENT
ON THE
CANADIAN ENVIRONMENTAL PROTECTION ACT

Submitted By:

Canadian Paint and Coatings Association
9900 Cavendish Blvd., Suite 103
St. Laurent, Québec H4M 2V2
Tel: 514-745-2611
Fax: 514-745-2031

Date Submitted:

March 15, 1996

I. THE ISSUE

On June 13, 1995, the House of Commons Standing Committee of Environment and Sustainable Development tabled its report on the *Canadian Environmental Protection Act* (CEPA) entitled: *It's About our Health: Towards Pollution Prevention*. This is the result of the comprehensive review of the provisions of the Act undertaken under Section 139 of the *Canadian Environmental Protection Act* which stipulates that within five years of enactment a Parliamentary Committee was to conduct this comprehensive review.

The Canadian Paint and Coatings Association (CPCA) participated in this exercise as early as 1993 when representatives from the association attended a two-day workshop session that focused on the examination of a range of theme and policy issues which had emerged since 1988. Following that session CPCA presented comments on behalf of the paint industry, in December 1993. CPCA also submitted comments before Environment Canada on its *Proposed Policy on Toxic Substances Management* in November 1994.

In December 1995, the Government Response to the Standing Committee of Environment and Sustainable Development was tabled in the House of Commons. We have now completed our review of the Government Response and wish to provide Environment Canada with the following comments on behalf of our member companies.

II. STATEMENT OF INTEREST

These comments are submitted on behalf of the Canadian Paint and Coatings Association (CPCA), the national trade association representing the interests of the Canadian paint and

coatings industry since 1913. CPCA member companies include major paint and coatings manufacturers and the prime suppliers of raw materials to the paint and coatings industry.

The Canadian paint and coatings industry is composed of two major product categories. The first of these is the trade sales or decorative paints, which are sold to the do-it-yourself consumer or painting contractor for application to homes and similar structures. This category includes such products as interior and exterior paints, wood stains, wood preservatives, primers, varnishes, lacquers, etc., which have decorative and/or protective uses.

The other major segment of the industry encompasses industrial coatings. This portion of the industry supplies products for application to a broad range of downstream manufactured goods such as automobiles, furniture, appliances, aircraft and farm equipment. These customer industries of the paint and coatings industry provide many Canadians with employment.

In 1994 the Canadian paint and coatings industry had estimated total sales of over 1.6 billion dollars, divided almost equally between the trade sales paint market and the industrial coatings market.

Furthermore, the surfaces and products that paint and coatings enhance and protect are an even more significant factor in the Canadian economy. These represent -- at a minimum -- values that are several orders of magnitude larger than the paint and coatings industry's sales.

As the organized representative of the Canadian paint industry, CPCA has been aggressively pro-active in helping to ensure that its industry takes the proper actions with respect to a broad range of environmental issues. In the early 80s the association produced its pioneering "Coatings Industry Introduction to Air Quality" and has continually held educational seminars to ensure that our industry, and its industrial customers, understand the necessity for proper control of ambient air emissions. This was followed in the mid-80s with the CPCA "Coatings Industry Introduction to Waste Management" which provided details on the proper handling of industrial wastes. Both publications have been revised on several occasions to take into account the latest developments in technology and regulations.

CPCA has also been very active in participating in a number of the initiatives associated with the implementation of the NO_x/VOC Management Plan to assist in identifying and implementing ways of reducing emissions of volatile organic compounds.

The association has also launched a program aimed at educating the consumer as to the correct handling and disposal of leftover household paint. Coupled with this, is a document produced to explain to waste authorities the nature of the products they handle and how to properly dispose of them.

These environmental programs and activities are complemented by an equal number of consumer and occupational health and safety programs, along with programs to help our industry safely transport its products.

CPCA offers this background for a very important reason. CPCA has always considered the protection of Canadians and their environment as a basic, fundamental principle that should guide its actions. Therefore, the comments contained in this document come from an organization which has faced its responsibility to its industry, the industry's customers and society, in helping to ensure that the products it produces are safely handled and properly applied, to minimize the negative impact on the environment.

III. GENERAL COMMENTS

First, we would like to state that we are much more comfortable with the *Government Response* than we were with the *Standing Committee of Environment and Sustainable Development's Report*. However, some of the elements contained in the *Government Response* raise some concerns.

The present CEPA is the result of numerous multi-stakeholder consultations. One of the aspects of the Act is the control of exposure of hazardous substances in order to protect both the public and the environment. This has been the agreed-upon approach from the beginning, an approach that considers both hazard assessment and risk assessment.

This approach recognizes that even if a substance is toxic, it is not harmful to the public or to the environment if neither has had exposure to it. Thus controlling the exposure is fundamental to an effective environmental program, a program that also allows technology to advance in tune with our other trading partners. It is also worthy to note that the *Toxic*

Substances Management Policy (TSMF) embrace risk assessment as an integral part of the total assessment process. The *Government Response* does not always reflect the recently adopted policy.

IV. SCIENCE AND THE PRECAUTIONARY PRINCIPLE

The government proposal to incorporate the precautionary principle in the Preamble to CEPA and, more importantly, the proposed definition of that principle raises serious concerns. In our view, precautionary measures should only be taken when there is scientific justification. Allowing otherwise would potentially involve 23,000 substances on the *Domestic Substances List*, and would subsequently bring Canadian manufacturing to a standstill. Conversely, pollution prevention measures should not be imposed where there is no scientific basis for either toxicity or risk to the environment.

V. ADMINISTRATIVE TOOLS AND NON REGULATORY INSTRUMENTS

We advocate a mix of both regulatory and non-regulatory instruments and we support the Treasury Board's policy that regulatory programs and proposals need to be examined to make sure that "regulation is the best available alternative".

We support this balanced approach with regulations being used only when no appropriate alternative could achieve the policy objectives, instead of the Committee's recommendations, which seem to have been endorsed by the Government, for viewing non-regulatory measures as strictly a supplement to regulations.

VI. RIGHT TO SUE

The government proposal to amend CEPA to include a right for citizens to take civil action against a party who violated CEPA or its regulations raises serious concerns in our industry. Although the government proposal specifies certain limits to the right to sue, we believe that it could promote environmental bounty hunters such as experienced in California. In the best interest of our economy, it is important that an acceptable solution be developed between the government and industry on this issue.

VII. ADMINISTRATIVE MONETARY PENALTIES

We are also concerned with the government proposal to "provide for administrative monetary penalties in a renewed CEPA." We fully support compliance to the Act and regulations. However, penalties should only be a last resort for those who willfully reject compliance.

VIII. POLLUTION PREVENTION

CPCA agrees that a shift away from pollution control and end-of-pipe solutions towards pollution prevention is desirable and needs to be encouraged within the CEPA legislative framework. We disagree, however, with the definition of pollution prevention and in particular, how that definition focused on preventing the generation and use of substances. This, we believe, could be inappropriately interpreted to exclude in-plant and out-of-plant recycling. Such an approach is inconsistent with the *Toxic Substances Management Policy* (TSMP) focus on management of substances to adequately control releases.

As we indicated in our submission of comments on CEPA, in December 1993: *"The definition of pollution prevention should include all activities that minimize or prevent the release of harmful substances, including activities that promote on-site, out-of-loop recycling, reuse and reclamation as well as off-site recycling, reuse and reclamation. Industry should have the choice of tools to prevent pollution."*

The National Pollutant Release Inventory (NPRI) should continue to focus on collection and annual publication of emission information and projections. CPCA does not support expanding NPRI or its legislative basis to provide information beyond emission levels and projections.

IX. CONTROLLING TOXIC SUBSTANCES

Canada should not automatically ban, phase-out or declare a substance toxic and regulate it simply because such a decision is taken by another OECD country. As we underlined in our submission of comments on CEPA, in December 1993: *"In a world of globalization the federal government, and especially Environment Canada, has a key role in ensuring harmonization of Canadian environmental regulations with that of other countries. Harmonization of legislation and regulations with that of other countries does not mean, however, merely adopting the most stringent regulations. Other factors such as climate, social and economic impact – including implementation and operating costs both to government and industry must be taken into account."*

Canadian traditions of consultation should be maintained. Decisions under CEPA to ban, phase-out or otherwise restrict substances should be taken on the basis of stakeholder consultation in Canada, and should not be based on automatically following decisions that have been taken by other governments.

We support the developing processes whereby certain substances posing trans-boundary pollution problems are dealt with. Decisions can be taken internationally about banning, phasing-out, regulating or otherwise controlling such substances. Such an approach makes sense and is based on taking action through international agreement. But this international agreement approach is quite different from the concept recommended by the Committee whereby Canada would sunset, ban or regulate a substance on the basis of some other jurisdiction doing so.

X. NEW SUBSTANCES

The government proposes to take a number of additional measures on the assessment of new substances. We would like to underline that when environment and industry groups agreed with the federal government on proceeding with the current *New Substances Notification Regulations* (NSNR) it was on the understanding that there would be a review of the regulations and enabling legislation following three years of experience with the regulations. That review was to look at whether the regulations were doing the job from an environmental and economic perspective. Consequently, it would be premature for amendments to be

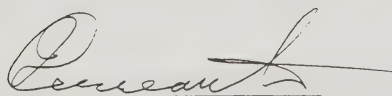
considered for the new substances notification requirements in the CEPA review process at this time.

In Recommendation 9.11: "In agreement with the Standing Committee, the Government of Canada proposes to amend CEPA to enable the Ministers to require the mandatory reporting of significant new uses as a means to ensure the continuing safety of a substance in light of a change in use pattern." We do not support this proposal. Toxicity and risk of a substance are carried on independent of "use". Duplication would result from "new use" reporting, and this would present an unnecessary burden on both industry and government resources, with no environmental benefit. Additionally, "new use" reporting would imply knowledge of "present use" of all DSL substances. Again there is no perceived benefit.

XI. CONCLUSION

Once again, CPCA has always considered the protection of Canadians and their environment as a basic, fundamental principle that should guide its actions. The association wants to continue to work with Environment Canada on all environmental issues of interest to its member companies. We appreciate the opportunity to offer these comments and would be pleased to provide further detail.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Perreault', with a long horizontal flourish extending to the right.

Jacques Perreault
Vice President, Administration

1500-275 Sturte Tel: (613) 236-1500
Ottawa, Ontario FAX: (613) 236-4291
K1P 9H9

Canadian Institut
Petroleum canadien
Products des produits
Institute oiliers

Alain Perez
President

March 11, 1996

The Honourable Sergio Marchi, P.C., M.P.
Minister of Environment
Room 507, Confederation
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Minister:

The Canadian Petroleum Products Institute (CPPI) welcomes the opportunity to provide comments on the Government Response to the Parliamentary Committee on the CEPA Review. Overall, CPPI views the document as a pragmatic response to the Committee's report and a reasonable basis for public consultation. There are many areas that CPPI supports. There are also a number of areas that we have concerns with and we have attempted to offer comments that will result in a renewed CEPA that is more effective.

The guiding principles of the response provide a sound underpinning to a renewed CEPA. CPPI is particularly encouraged with the recognition given to science and economic responsibility in the document. Risk based decision making is referenced under the Science principle - CPPI strongly recommends that this scientific and risk assessment approach to decision making should be elevated to a principle that underlies CEPA. Intergovernmental co-operation is critical to the successful management of the environmental agenda and the document does reflect this. Enshrining of the Toxic Substances Management Policy (TSMP) in the document is also strongly supported.

CPPI also supports the focus on pollution prevention as a sensible approach to sustainable development - however, we believe that the definition used is much too narrow and restrictive. We support the governments view that pollution prevention is neither a stand alone strategy nor the answer to all environmental problems. CPPI believes that reuse, recycling and recovery must be included as part of an overall pollution prevention strategy.

There are a number of concerns that CPPI has in the document, some more serious than others. As one would expect, the Fuels section is of particular concern and we have addressed these in detailed comments. The section on waste is in need of a major

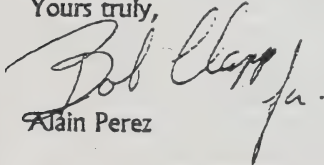
CPPI

- 2 -

revamp. A couple of themes that weave their way through the document - cost recovery and data collection - are also of concern. We attach a set of principles for consideration relative to cost recovery. We believe the response document is too intrusive and requires too much reporting, thus imposing a significant burden on business without any appreciable benefit. Comments directed at the Public Participation and Enforcement section also suggest areas for improvement. In particular, with respect to the "right to sue provisions", we do not for the reasons outlined, see any demonstrable need for a new cause of action...one that has found limited acceptance in the litigious United States. The inclusion of greenhouse gases, including carbon dioxide in CEPA is not supported by CPPI - these are part of a much broader issue that should be dealt with at a broad government level that includes, in particular, the economic ministries.

CPPI will contact your ministry to discuss this submission to ensure clarity of understanding and respond to any questions that they may have.

Yours truly,


Alain Perez

cc: The Honourable David Dingwall, Minister of Health
The Honourable Anne McLellan, Minister of Natural Resources
The Honourable John Manley, Minister of Industry
The Honourable Paul Martin, Minister of Finance
The Honourable Lloyd Axworthy, Minister of Foreign Affairs
The Honourable David Andersen, Minister of Transport
The Honourable Marcel Massé, President of the Treasury Board
Mr. Mel Cappe, Deputy Minister, Environment Canada

A Renewed CEPA CPPI Detailed Comments

Chapter I - Guiding Principles

This chapter sets an important tone for the whole of the government document and for a renewed CEPA - a tone that CPPI supports. We are particularly pleased to see that sound science and economic responsibility are key underpinnings of the report. A concept that, we believe, needs to be included is prioritization - one that CPPI has pushed for many years. There is a real need to prioritize issues to ensure the effective use of our scarce resources.

- 1.1 We support the Brundland definition.
- 1.2 CPPI supports the focus on pollution prevention as a priority approach to environmental protection, however, the narrow application of the definition is cause for concern. This will be discussed in our comments on Chapter 6.
- 1.4 The intent of the recommendation is sound, however we believe that it is premature to include a definition of biodiversity until more experience is gained with respect to the Convention on Biological Diversity and its implications. This could perhaps be dealt with at the next CEPA review.
- 1.5 CPPI was most concerned about the tone of the Caccia Committee report with respect to Intergovernmental Cooperation and are pleased to see the strong positive statement in this response. We suggest that the International dimension be recognized in this clause. Canada should cooperate internationally on global issues and must do so in full consultation and with the agreement of the provinces and territories.
- 1.6 We strongly support this recommendation on science. CPPI recommends that the wording included in the preamble to this section "Government is committed to a risk-based approach to decision-making" be included in the specific wording.
- 1.8 Ensure that statement is aligned with Treasury Board guidelines for benefit - cost analysis.
- 1.9 The concept of user/producer responsibility is not well understood at this time and we believe it would be appropriate to initiate stakeholder consultation and defer inclusion in CEPA until the next review.

Chapter 2 - Administration

The concept of using equivalency agreements with the provinces and territories to improve administration of CEPA is supported.

- 2.9 A longer time frame to expiry should be considered here - from an efficiency and
- 2.12 effectiveness perspective. Perhaps a review every 5 to 7 years would be more appropriate.
- 2.13 CPPI supports this recommendation and agrees that proposals for the use of measures such as environmental taxes and charges or financial incentives in the form of tax measures should remain the responsibility of the Minister of Finance.
- 2.16 A review every 7 years of CEPA such as the one that we just went through would not be an effective utilization of our collective resources. The issue of predictability for the business community also must be considered. CPPI suggests that a review be considered and only undertaken if there are strong drivers.
- 2.17 When delving into the world of cost recovery, we must consider the impact on competitiveness, the value of the service to the customer and the effectiveness/efficiency of the service delivery. We have attached a set of guiding principles that were developed by the business community and we recommend should be adhered to (Attachment I).

Chapter 3 - Public Participation

With respect to "**the right to sue provisions**", there is no demonstrable need for a new cause of action. Any person including the Crown that suffers loss of damage has the statutory right of action under CEPA in addition to common law remedies of negligence, nuisance, trespass, strict liability and others. Moreover, where there has been a conviction, CEPA provides the Court with a wide range of remedies including prohibition, remediation, compensation, publication, community service, payment for research, and conditions requiring good conduct. Even if constitutional, the creating a new cause of action is an intrusion of the Federal government into an area that has been a Provincial matter and should be left to the Provinces to determine. The government should not adopt from the United States a new cause of action that has found limited acceptance even in litigious United States. There are in existence better ways for protecting the environment. The elected representatives should be responsible for the protection of the environment and should make the decisions balancing the social, economic, and environmental interests rather than the courts at the instigation of special interest groups.

CPPI recommends that an analysis should be provided by the government as to why this provision is not redundant given the forgoing and given that the government has already provided for Environmental Auditor as an alternative (and likely more effective) way to deal with "Red Book" commitments to provide citizens a recourse if the government persistently fails to enforce an environmental law. This analysis should be provided to the public as part of the consultation process for the CEPA review.

If the government decides to proceed with incorporating a right to sue within CEPA, CPPI recommends that this cause of action should be modeled on the Ontario Environmental Bill of Rights as the Response proposes (more clearly in the Executive Summary than in Chapter). The new cause of action should be limited to CEPA and the protection of public resources, prospective, and contain all the safeguards that are set out in the current Ontario EBR. The Ontario legislation was developed through extensive consultations involving all stakeholders and the balance of its provisions would be relevant to a new cause of action. It would be a waste of resources to repeat the detailed consultations that took place in Ontario and to adopt a different approach would ignore the Ontario consensus process and would be inconsistent with the government's stated objective of intergovernmental coordination of environmental measures.

- 3.1 Ontario has had experience with an electronic registry for a few years. The costs, benefits, issues and opportunities should be examined and a Federal system, if necessary, should incorporate the learnings.

More specifically, three options are presented for putting a registry in place - CPPI recommends the third option - creating the registry through a policy decision without enshrining its creation in law.

- 3.3 Cost recovery principles, as outlined in our comments under 2.17 are also appropriate for this recommendation.

- 3.7 The government should not be encouraging citizens to seek injunctions. This is open to abuse because of the vagueness of much environmental legislation. The government should be the party responsible for the enforcement of its legislation.

We agree with the rationale that the report uses for not endorsing the Standing Committee's recommendations that citizens be provided the right to undertake a private prosecution, and believe it should apply also to oppose citizen action suits to risk injunction.

Cost Remedy for Environmental Risk - CPPI supports the recommendation to not incorporate the Standing Committee's recommendation. CPPI strongly opposes remedies for environmental risk and reverse onus on causation. There is no demonstrable problem that is not adequately dealt with under the existing justice system. It would lead to a U.S. type litigation or worse. The main beneficiaries would be lawyers at the expense of the

government, industry, the court system and the taxpayer. No amount of studying on this topic is going to lead to an acceptable remedy.

- 3.10 CPPI fully supports this recommendation that incorporating the rights to prosecute in CEPA should be rejected. The government should be able to exercise its discretion to prosecute and this is vital to the effective administration of justice.

Chapter 4 - Ecosystem Science and National Norms

CPPI endorses the ecosystem approach and the emphasis on the importance of science to sound decision making outlined in this chapter.

- 4.2 The focus on the State of Environment reports in this recommendation is supported. These reports are key to helping us understand where we are making progress, the results of actions and where we should focus our scarce resources to deal with priority issues.

A concern that we have with respect to this recommendation is the pervasive nature of requests for information. There needs to be checks and balances on such requests to ensure that there is a recognized need for the data. The open-endedness of such words as; "whatever data", "capable of becoming", "may be released", "such as"; should not be used.

- 4.3 CPPI supports the recommendation to enshrine NPRI in CEPA and the use of a multi-stakeholder consultation process for changing NPRI. There are a number of programs that focus on emission reduction and reporting, such as ARET, Ontario's P-4 program etc. A streamlined inventory that meets Federal and Provincial needs and that minimizes the reporting burden on Industry is what we should be targeting for.

In addition, CPPI suggests that a methodology to ensure data integrity in the NPRI database be introduced. CPPI is willing to work with the government to develop an appropriate methodology.

Chapter 5 - Enforcement

CPPI recognizes that enforcement activities are an essential component in securing compliance with CEPA and encourages the government to consider alternative enforcement mechanisms which are fair, effective and efficient. CPPI, however, has specific concerns and recommends certain alternatives to some of the enforcement proposals contained in Chapter 5.

CPPI does not support the inclusion of Administrative Monetary Penalties (AMP's) and negotiated settlements in CEPA and believes that the existing penal framework under CEPA is quite adequate. Ticketing for minor infractions, which CPPI supports, provides a satisfactory avenue for summarily dealing with minor infractions. Non-ticketable infractions are prosecuted under the existing criminal process and upon conviction subject to a wide range of penalties and orders.

AMP's whether categorized as administrative, civil or quasi-criminal, are penal, not remedial, in nature and will be treated as such by the parties involved, the media and the public. Penal sanctions ought not to be imposed on a party except following proceedings which employ sufficient evidentiary safeguards, including the criminal standard of proof and the due diligence defence. It would be unfair and contrary to the reasoning of the Supreme Court of Canada in R Vs Sault Ste. Marie to subject parties to penalty under circumstances where all reasonable care had been taken by them to avoid the harm. The arguments of the Supreme Court against absolute liability are equally applicable to AMP's. Absolute liability violates fundamental principles of penal liability and is based on the assumption that a higher standard of care results from absolute liability. A person taking every reasonable precautionary measure is not likely to take additional measures, knowing that however much care he or she takes will not serve as a defence in the event of a breach. If a party has exercised care and skill, a conviction will not have a deterrent effect upon him or others. **Canada should be cautious about following the U.S. lead by adopting a civil penalty type provision which serves to increase legal entanglement and costs at the expense of more effective compliance and remedial programs.**

While CPPI supports government initiatives to encourage compliance and the timely correction of environmental damage, **CPPI does not recommend that the government adopt the form of negotiated settlements proposed in the government response.** As a mechanism to facilitate the development and implementation of enforceable plans of action to remediate an existing violation and ensure that future violations do not occur, we recommend that the government consider adopting the Ontario program approval approach. Upon discovery of an actual or potential environmental risk or violation, a party may enter into a program approval with the regulator to address the source of the problem over a specified period of time. By not requiring that a party admit to a violation as a term of the approval and by providing the party with immunity from prosecution if the party fully complies with the approval, program approvals hold

considerable promise as a compliance tool which encourages parties to step forward not only with actual but potential violations.

CPPI recommends that, given the nature of the power, authority to issue "cease and desist" or "stop" orders be limited to designated senior officials and exercisable only under circumstances where the violation has caused or may cause sufficient danger to human health or the environment.

- 5.13 CPPI believes that a more reasonable option to the proposal to publish an apology would be to require the offender to publish a case study of the offending incident so that others could avoid similar mistakes. Publishing an apology is unlikely to result in any environmental improvement.
- 5.14 CPPI suggests that the direction of how awards are imposed be left to the discretion of the courts as to who to designate as trustee and, in particular, there be no specific mention of the Minister of Environment as a possible designate.

Chapter 6 - Pollution Prevention

CPPI supports the notion of pollution prevention as being Canada's priority approach to environmental management. As we have stated previously, we do have concerns with the narrow definition of pollution prevention and how it is implemented. A focus on avoiding or minimizing the creation of pollutants and wastes is laudable as a prime consideration; but there are other legitimate definitions that extend pollution prevention to include recycling, reuse and recovery management techniques! For example, a waste stream from one process can be reused as a feedstock in a second process or be disposed. Pollution Prevention, as defined in the document, would require the reduction of waste which would require generation of virgin feedstock for the second process - a more costly and less environmentally friendly approach. Energy recovery is used extensively in our refineries to reduce overall fuel consumption.

Environmentally responsible management of pollution and wastes must include all techniques that reduce environmental impact. This is particularly true for existing facilities which need the full range of techniques - avoiding or minimizing the creation of pollutants and wastes is not always viable due to capital stock turnover frequency - hence all tools must be available. At the same time, all techniques should be evaluated for environment and economic effectiveness in any environmental management plan.

The question of off-site recycling and reuse has been debated at length. CPPI believes that these are valid pollution prevention techniques and should be included in the broad definition of pollution prevention. The Petroleum Products Sector utilizes this technique for solid and liquid catalyst. In these cases the material is moved off-site to a company who's core business is the regeneration of the catalyst. It is regenerated and shipped back to the refiner for reuse. This is the environmentally effective and most cost effective way to handle this part of the business.

- 6.3 CPPI recommends that the ability of the Minister to intervene be restricted to situations where there has been a conviction or an offence under CEPA through the courts. This recommendation would then be consistent with 5.13.

- 6.4 The guidelines for model pollution prevention plans should not be set out as being
- 6.5 mandatory - this is what these two recommendations in essence do. The way these
- 6.6 recommendations are currently written is much too prescriptive. The guidelines could be referenced as such and contain elements that should be considered in putting together a pollution prevention plan. As a reference guideline, room is left for flexibility, and innovation in the preparation of plan.

- 6.7 CPPI does not support this recommendation - it is inconsistent with recommendation 4.3!

Pollution prevention is a tool, a means of achieving results - the how. As CPPI has stated previously, it is the Governments role to set broad objectives and goals - the role of Industry is to achieve them in the most effective manner. Adding a reporting burden to describe the "how" is not consistent with this.

- 6.9 Consistency with 4.2 is important here. As stated earlier, there must be checks
- 6.10 and balances to ensure that CEPA does not impose a reporting burden on industry. There must be a demonstrated need and value for the data being requested.

The concept outlined in 6.10 for a national pollution prevention information clearinghouse is supported. This, we trust, would be a voluntary initiative.

- 6.12 Care must be taken to scope and work these recommendations so as not to
- 6.18 duplicate or overlap the legislative framework, regulations and plans developed under the Amended Canada Shipping Act. Unnecessary duplications and overlapping regulation will only result in confusion and time lost.

- 6.17 CPPI strongly supports this recommendation to create a national spill reporting network one stop shopping. We further recommend the harmonization of spill reporting guidelines across federal, provincial and territorial jurisdiction.

Chapter 8 - Controlling Pollution and Wastes

There are a number of areas in this chapter that impact CPPI member companies, especially the Fuels section. We believe that significant progress has been made in this section since the Committee report. There are a number of areas however, that could be improved upon so that a renewed CEPA is more effective. Specifically, the principles of sound science, risk based assessment and economic responsibility should be reenforced as key underpinnings of this section. In addition, any regulations governing fuels should be subject to the same review process afforded any other substance covered under CEPA - they should not be singled out for special treatment. CPPI offers to work with the government to elaborate on key issues in this section.

- 8.1 CPPI encourages the government to build upon existing mechanisms such as NAICC to deal with International Air Issues. This mechanism brings together the Provinces, Federal government and a multi-stakeholder Advisory Committee to, in essence, comprehensively manage air issues.

We believe that "emergency situation" will need greater clarity of definition to avoid any confusion in the future when it may be applied.

The inclusion of greenhouse gases, including carbon dioxide is not supported by CPPI. Climate change is a very broad international issue that could have a significant impact on many government departments. Responsibility for management of greenhouse gases should not be focussed in an act that has a narrow base - it should be managed at a government level so that economic and social ministries are engaged in the process. The phrase "greenhouse gases including carbon dioxide" should be deleted.

- 8.2 CPPI strongly supports these recommendations which would allow for a national minimum standard for fuel to be referenced in CEPA and also allow refiners to focus on performance and provide freedom to adjust ingredients and characteristics in the most cost effective manner. The approach would be based on scientific, risk, economic and consultative principles similar to those attached (Attachment II).

A managing framework for national fuel standards is currently under development through a CCME Task Force - recognition of this work is a must to ensure that all governments are in agreement. We must ensure a "harmonized" approach to this task in order to provide for a framework that is meaningful, workable from an administrative and enforcement perspective and that has all jurisdictions on board.

- 8.4 CPPI questions whether this recommendation is redundant in the context of 8.2 and 8.3. It would appear that these two recommendations provide ample authority to deal with fuel standards and characteristics. Based on this, CPPI recommends deleting this section.

If it is deemed necessary to continue with the recommendations, CPPI suggests the following wording changes to recognize that we are dealing with a system - fuels and engines. An equal onus on fuel and engine manufacturers is required to meet environment and economic objectives.

"There must be compatibility between fuels and the equipment in the vehicles that would burn them, in order to prevent deterioration of the emission performance of the equipment. The amended wording of a

renewed CEPA could also provide authority to deal with *scientifically demonstrated non-compatibility of fuels and engines caused by the design of the engine system or certain characteristics or constituents of fuels*".

- 8.5 Caution needs to be exercised with the intent of this recommendation that expands the regulatory power for fuel properties and components beyond the combustion of fuels. Any use of this recommendation must be guided by scientific principles, risk and the fundamentals of CEPA - that a significant health and environmental impact would occur because of substance releases to the environment. Limits in the extent to which regulation can be developed in these areas need to be developed. There is a significant potential here for overlap with existing Provincial jurisdiction.
- 8.6 This recommendation represents a significant improvement over that in the Committee report. CPPI, however, continues to be concerned about the potential implications of this from a competitiveness and trade perspective. This could represent a subrogation of the environmental and health regulatory powers of other countries, and could be in violation of trade laws and existing trade agreements. Should Canada decide to proceed in this manner, then it would be to our competitive disadvantage - the need would be satisfied by another country - the net result is no environmental improvement, only an economic penalty.
- Should this recommendation remain, CPPI strongly urges that the principles of science, risk and economics be re-enforced in the final texts. In addition, we recommend removing the words "and fuel ingredients" from the text.
- 8.12 This section has been identified by a number of sectors of industry as the most problematic of the entire government response. CPPI shares this view that it is the most onerous, prescriptive, intrusive section and in need of significant overhaul.
- 8.22 Issues around Federal/Provincial jurisdiction, Canadian self-sufficiency for hazardous waste disposal and the inclusion of non-hazardous waste are of significant concern to CPPI.
- 8.12 CPPI supports the Government's effort to establish a waste definition. The definition of hazardous waste varies from province to province and varies also with the United States. In these cases, the rules for export of wastes are ambiguous.
- 8.15 This recommendation should be deleted. Forcing self-sufficiency of waste disposal, which is what this recommendation does, simply does not stand up to economic nor environmental scrutiny.
- 8.16 To maintain the theme of scientific and economic responsibility, new authorities to ban and control import and export of hazardous waste should also include the wording, "based on principles of science, risk assessment and economics".
- 8.17

- 8.18 CPPI does not see any justification for risk assessment including non-hazardous solid
- 8.19 wastes in CEPA, hence these recommendations should be deleted.
- 8.20 We do not believe that this recommendation is consistent with Federal/Provincial harmonization and question the value-add of Federal intrusion into this area.
- 8.21 This seems to be an over-extension of the cost recovery principle and CPPI does not support it.
- 8.22 This is clearly redundant as CPPI does not support the inclusion of non-hazardous waste in CEPA.

Chapter 9 - Controlling Toxic Substances

CPPI strongly supports the direction that this chapter takes in embracing the Toxic Substances Management Plan (TSMP) as the appropriate basis for controlling toxic substances through CEPA. The risk and science based decision making process advocated in the TSMP, provides a sound underpinning for management of toxics.

- 9.5 CPPI does not believe there is a need to strengthen the legal basis for proposing decisions as laid out in this recommendation - hence there is no need to amend Section 11. In other words, we agree with the conclusion stated in the first line of this recommendation.
- 9.11 This is another recommendation that has the potential to require yet more reporting. CPPI recommends that this be deleted and incorporated in the multi-stakeholder review of the New Substances Notification Regulations scheduled for 1997.



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**CANADIAN PORT AND HARBOUR ASSOCIATION
L'ASSOCIATION DES PORTS ET HAVRES DU CANADA**

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March 15, 1996

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RECEIVED - REQU

MAR 15 1996

SUBJECT: A RENEWED CEPA

On behalf of the Canadian Port and Harbour Association, I am pleased to forward to you this report prepared by Mr. Bill Fioratos, Chairman of the Environment Committee of the CPHA. Thank you for the opportunity for the Association to express its views on the subject.

If we can be of any further assistance, please do not hesitate to contact me at (506) 636-4869.

Yours truly,

CANADIAN PORT AND HARBOUR ASSOCIATION

R. Adam McBride,
President

attachments

**REPRESENTATION BY THE
CANADIAN PORT AND HARBOUR ASSOCIATION
ENVIRONMENTAL PROTECTION LEGISLATION
DESIGNED FOR THE FUTURE
A RENEWED CEPA**

Prepared by: Canadian Port and Harbour Association
March, 1996

INTRODUCTION

The Standing Committee on the Environment and Sustainable Development outlined a number of recommendations in its fifth report titled "It's about our Health! Towards Pollution Prevention". The Government response to these recommendations is contained in the publication titled "Environment Protection Legislation Designed for the Future - A renewed CEPA".

The Environmental Committee of the Canadian Port and Harbour Association has reviewed the latter document and has assembled several comments with reference to recommendations which affect Canadian ports. This representation on behalf of the Canadian Port and Harbour Association is being made in reply to the Government's request for comments that was advertised in the December 23, 1995 edition of the Canada Gazette.

COMMENTS

Review of the Government response by the Canadian Port and Harbour Association produced a few comments on specific issues that are a concern to the port community.

The issue of cost recovery is a sensitive matter with Canadian ports. Sections 2.17, 7.5, 8.21, 8.29, and 8.30 all indicate the Government's intention to proceed with recovery of costs for all types of services. With particular reference to Environment Canada's proposal to recover costs with respect to the Ocean Disposal Program, the Canadian Port and Harbour Association has already provided detailed comments on this proposal. The Association generally supports the premise of cost recovery, but cautions that implementation may tend to raise our costs and thus those of our marine clients. Thus, marine traffic at Canadian ports could be diverted to our competitors in the United States.

As noted in our brief, previously submitted on this issue, the Association recommends a thorough analysis of the costs and benefits of this type of program, which fully considers the impact on our clients and the potential for diversion of cargoes to U.S. ports.

Management of Coastal Zones will become increasingly important. One suggestion of the Association follows. The response indicates that once the proposed Canada Oceans Act becomes law, Environment Canada will develop a policy to deal with land based sources of pollution. A concern was voiced by Association members on the matter of coastal zone management.

The issue of cost recovery has been tabled by Environment Canada for many of its programs. The implementation of charges for monitoring, public consultation, etc. for this program should not be added to the proposed recovery of costs for the Ocean Disposal Program.

Section 8.24 recommends the amendment of the definition of ocean dumping to include disposal from wharves and in intertidal zones. The Association would like to see this definition expanded to include effluent from outfalls. At present there are many outfalls that lie on harbour bottoms. These over time deposit many materials into ports causing difficulty in terms of contaminated dredge spoil.

In many instances when dredging projects are proposed by a port authority, analysis of the dredge spoil reveals that there is some type of contamination present. In many instances the source of the contamination is not known, but in some cases the likely source is the effluent from various outfalls. In many sections of the Government Response, and in fact the document "It's about our Health! Towards Pollution Prevention" there is mention made of "polluter pay" and cost recovery. It is the belief of the Association that the issue of outfalls should be looked at as an ocean disposal issue by Environment Canada. This may be one way to implement Recommendation 60.

In the document "It's about our Health! Towards Pollution Prevention" page 117 it has been noted that a goal would be the control of land based pollution. The review of outfalls in harbours under the criteria for ocean dumping may be a useful tool in reducing pollution from land based sources.

With regard to 8.24 the Canadian Port and Harbour Association looks forward to working with Environment Canada on establishing new guidelines for disposal of dredge sediments. A matter for consideration for broadening the scope of allowable ocean disposal of sediments, is the engineered solution. At present, only dredge spoil meeting the disposal guidelines, or can be shown to be rapidly rendered harmless, are permitted for ocean disposal. The Association believes that there should be additional consideration for engineered solutions which may make a significant improvement to the environment, but not quite to the standards set by the criteria set as guidelines for disposal of dredged sediments.

CONCLUSION

The Association would like to thank Environment Canada officials for the opportunity to provide comments on the CEPA Review: the Government Response. Our comments are few, but hopefully will be of assistance in reviewing the portions of CEPA that affect the port community.



CANADIAN PULP AND PAPER ASSOCIATION
L'ASSOCIATION CANADIENNE DES PÂTES ET PAPIERS

March 21, 1996

The Honourable Sergio Marchi, P.C., M.P.
Minister of the Environment
Les Terrasses de la Chaudière
10 Wellington Street
Hull, Quebec
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Rec'd-DCU-DOE

MAR 26 1996

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Dear Minister:

The Canadian Pulp and Paper Association has completed its review of the *Government Response to the report by the Standing Committee on Environment and Sustainable Development regarding the Canadian Environmental Protection Act (CEPA)*. The Association welcomes another opportunity to offer its recommendations on the future of CEPA. Attached please find our submission.

Clearly, the Government Response has addressed a number of industry concerns that were brought forward through past submissions. Therefore, it incorporates many general principles that CPPA supports. These include a shift towards pollution prevention and a commitment to the incorporation of the government's Toxic Substances Management Policy (TSMP) in the new Act.

It is important, however, that the government recognize and acknowledge that there is no toxic crisis in Canada. This fact is supported by information from programs such as NPRI, ARET and NERM. In addition, the government's new TSMP appears to recognize this fact. There has been continual environmental improvement in virtually every industrial sector in Canada, including pulp and paper. Our industry is committed to contributing to a continuation of this trend.

With the current emphasis on government downsizing, we had anticipated that proposals would be advanced to remove some of the existing regulations from CEPA rather than proposing that more be added. CPPA feels that the CEPA priority must be a focus on efficiency and intergovernmental cooperation.

We are pleased to see the government's commitment to incorporation of the Toxic Substances Management Policy within CEPA. This returns CEPA's focus to a science-based, multistakeholder process which uses risk assessment and regulatory impact assessments. The Government Response expressly recognizes two additional and important factors: that regulations must take into account potential economic impact; and that the government is committed to a risk-based approach to decision-making. CPPA believes these considerations are important in a renewed CEPA in order to maintain a competitive forestry industry.

The Response also points out, correctly, that changes and clarification are required in some of the definitions of the key principles and concepts. For example, clear definitions of pollution prevention, virtual elimination, and the precautionary principle must be developed. CPPA also believes that it is premature to include the concepts of biodiversity and ecosystem approach as guiding principles in CEPA at this time. We urge that all interested parties continue to work on the development of these important concepts.

CPPA continues to have a number of serious concerns with the government proposals. The Association anticipates being part of the public consultation process leading to an amended CEPA. The Association's major concerns, which will be highlighted in the attached submission, are:

- *the apparent lack of substantive progress in federal/provincial jurisdictional rationalization and harmonization.* The renewed CEPA concepts provide numerous potential avenues for additional federal intrusion into provincial jurisdiction, as well as potential for a continuing and inefficient duplication of efforts. This is particularly noticeable in Chapters 6 and 8. CPPA feels it is vitally important that the CCME Environmental Management Framework Agreement be completed and implemented *before* final legislation on CEPA is drafted. The Framework Agreement is seen as an important step toward identification of roles and responsibilities between the federal government and other governments.
- *the vast expansion of federal government responsibilities and activities included in the proposal.* In the present climate of fiscal restraint and government downsizing, it seems inappropriate to consider such an expansion. There are opportunities to remove regulations from CEPA and to avoid implementing new regulations without compromising environmental protection.
- *the Government Response continues to emphasize command-and-control regulations to manage toxic substances.* Cooperative partnerships and voluntary initiatives are discussed in the Response, but government support appears to be tentative. This concern was expressed in CPPA's previous comments on the Standing Committee's Report. Government policy requires that regulations be introduced only when a need has been clearly identified. Conversely, regulations must not be introduced until departments can show that they have the systems and resources in place to manage the regulatory program effectively.

The ambitious proposals for a renewed CEPA found in the Government Response leave unanswered questions about how programs can be effectively managed, about the need and effectiveness of additional regulations and, most importantly, the role of other governments.

In the CPPA submission to the Standing Committee in 1994, the Association urged that all proposals to amend CEPA be subjected to an important criterion: *do the changes promote both increased environmental protection and economic efficiency (competitiveness) at the same time?* We believe this is still the most important criterion for this undertaking. To accomplish this, the new CEPA must be open, manageable, and harmonized with all jurisdictions — and it must emphasize cooperative partnerships.

We hope you will receive our recommendations favourably, and we look forward to participating in the public consultation process.

We believe that many of the recommendations in our submission and our analysis of the Government Response will be of interest to your colleagues in other Ministries, and we will be sending our comments to your colleague Ministers as copied below.

Sincerely,



Lise Lachapelle (Mrs.)
President and C.E.O.

c.c. The Honourable Lloyd Axworthy, Minister of Foreign Affairs
The Honourable David Dingwall, Minister of Health
The Honourable Arthur Eggleton, Minister for International Trade
The Honourable John Manley, Minister of Industry
The Honourable Paul Martin, Minister of Finance
The Honourable Marcel Massé, Treasury Board
The Honourable Anne McLellan, Minister of Natural Resources
Mel Cappe, Deputy Minister, Environment Canada

Canadian
Pulp and Paper
Association



CEPA Review: The Government Response

A Submission
to the Minister of the Environment
on the Review of the
Canadian Environmental Protection Act

March 1996

Canadian Pulp and Paper

The Canadian Pulp and Paper Association is a national association representing 57 member companies that produce almost 90% of Canada's pulp, paper and paperboard.

Canada is the world's largest exporter of pulp and paper. Furthermore, the industry is the largest contributor to Canada's balance of payments. It ranks first in terms of employment, salaries and wages, and value added by manufacturer.

About 64,000 Canadians are directly employed by the industry, 175,000 are employed in forestry operations, and one million Canadian jobs are supported by the forest sector as a whole.

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CEPA REVIEW: THE GOVERNMENT RESPONSE

INTRODUCTION

The Canadian Pulp and Paper Association has participated in past reviews of CEPA legislation and welcomes another opportunity to offer its recommendations on the future of CEPA. CPPA feels that the Government Response is an improvement over the Standing Committee Report but the Association still has a number of concerns. We will include a number of suggestions in this submission which we feel would lead to an improved CEPA.

In the CPPA submission to the Standing Committee in 1994, the Association suggested that all proposals to amend CEPA be subjected to an important criterion: *do the changes promote both increased environmental protection and economic efficiency (competitiveness) at the same time?* We believe this is still the most important criterion for this undertaking. To accomplish this, the new CEPA must be open, manageable, harmonized with all jurisdictions and must emphasize cooperative partnerships.

CPPA feels it is important for the government to recognize and acknowledge that there is no toxic crisis in Canada. This fact is supported by information from programs such as NPRI, ARET and NERM. There has been continual environmental improvement in virtually every sector of society and the pulp and paper industry is committed to a continuation of this trend.

We anticipated that, with the current emphasis on government downsizing, proposals would be advanced recommending the removal of some of the existing regulations from CEPA rather than proposing more be added. We do not believe that the Government Response reflects this current reality or a stated government objective of smaller, more efficient government. The Association feels that CEPA's priority must be a focus on efficiency and intergovernmental cooperation.

The Government Response has addressed a number of industry concerns that were brought forward through past submissions and, therefore, it incorporates many general principles that CPPA supports. These include the principles of sustainable development, a shift towards pollution prevention, and a commitment to the incorporation of the government's Toxic Substances Management Policy (TSMP) into the new Act.

The TSMP returns the CEPA focus to a science-based multistakeholder process which uses risk assessment and regulatory impact assessments. The Response expressly recognizes that regulations must consider potential economic impact and that the government is committed to a risk-based approach to decision making. CPPA feels these considerations are important in a renewed CEPA in order to maintain a competitive forestry industry.

The Response also correctly points out that changes and clarification are required in some of the definitions of the key principles and concepts. For example, clear definitions of pollution prevention, virtual elimination and the precautionary principle must be developed.

MAJOR CONCERNS

CPPA has three major concerns remaining with the proposals in the Government Response:

1. **The apparent lack of substantive progress in federal/ provincial jurisdictional rationalization and harmonization.**

The renewed CEPA concepts provide numerous potential avenues for additional federal intrusion into provincial jurisdiction as well as potential for continuing inefficient duplication of efforts. This is particularly noticeable in Chapters 6 and 8. Many of the proposed federal government activities in the Response already have a provincial component but, although cooperative approaches have been proposed, there apparently has been little headway or political will to develop the processes necessary to harmonize the effort and avoid the extra administration and duplication that seems imminent.

The proposed increase in enforcement efforts alone could better be achieved by an efficient coordination of federal/provincial enforcement strategies rather than a potential federal duplication of provincial efforts.

The CCME Environmental Management Framework Agreement could be a positive step towards substantive harmonization agreements. The Framework Agreement is seen as an important step toward identification of roles and responsibilities between the federal government and other governments. There is an opportunity here to effectively tie CEPA activities in with the Framework Agreement. CPPA feels it is vitally important that the CCME Environmental Management Framework Agreement be completed before drafting final legislation on CEPA.

2. **The vast expansion of federal government responsibilities and activities included in the proposal.**

Under the present climate of fiscal restraint and government, downsizing, it seems inappropriate to consider such an expansion. As we point out in the introduction, we do not believe that the Government Response reflects this current reality and the often stated government objective of smaller, more efficient government.

There are opportunities to remove regulations from CEPA as well as to avoid implementing new regulations without compromising environmental protection. One example that is of interest to CPPA is the continued inclusion of the *Pulp and Paper Mill Defoamer and Wood Chip Regulation* in CEPA. CPPA pointed out in its 1994 submission that the industry had

eliminated the environmental risk that this legislation seeks to address by eliminating dioxins and furans from mill effluents. The *Pulp and Paper Mill Effluent Chlorinated Dioxin and Furan Regulation* ensures that mills will continue to take measures to prevent the release of dioxins and furans yet the industry and government still bear the costs of administering both regulations.

Examples of ambitious undertakings include the timing, cost and burden of categorizing 23,000 substances and the screening of **all** OECD/provincial substances that have been banned, sunsetted etc. The administrative tasks associated with additional registries of information, national pollution prevention clearing houses, demonstration projects and awards programs seem inappropriate. Additionally, there are plans proposed for the federal government to undertake the development of new frameworks and timelines for air and water pollution initiatives, to do research into nutrients and for the creation of environmental objectives and codes of practice to preserve the quality of coastal areas including a national ocean disposal database.

3. Continual emphasis on command and control regulations to manage toxic substances.

CPPA recognizes that regulation will always be necessary in some cases. Government policy requires that regulations be introduced only when a need is clearly identified and that regulations must not be introduced until departments can show that they have the systems and resources in place to manage the regulatory program effectively. Cooperative partnerships and voluntary initiatives are discussed in the Response but government support appears to be tentative. There appears to be an atmosphere of an expanded government role and a retrenchment to regulation. This concern was expressed in CPPA's comments on the Standing Committee report as well. The industry is participating in voluntary programs such as ARET and the National Voluntary Challenge and Registry Program (VCR) and Voluntary programs have been proven to work.

The ambitious proposals for a renewed CEPA leave unanswered questions about how the programs could be effectively managed, about the need and effectiveness of additional regulations, and the role of other governments. The Association anticipates being part of the public consultation process leading to an amended CEPA.

OTHER SIGNIFICANT CONCERNS

In addition to the above three major concerns, CPPA has other significant concerns with the proposals in the Government Response:

- **The adoption of biodiversity and the ecosystem approach as guiding principles:**

CPPA continues to support the concept of the development of such a holistic approach to environmental protection. We share concerns, however, about the lack of information and understanding to support them at this time. In Chapter 4 of the Government Response the government recognizes this lack of information. The "Ecosystem Approach" part of the chapter states that:

- *a better understanding of the structure, functions and interactions of and in ecosystems* is required;
- *more research on the ways that specific substances, mixtures of substances, effluents and wastes enter the environment.....* is required;
- *improved environmental monitoring to assess effects on ecosystems...* is required.

CPPA believes, therefore, that it is premature to try and build these diffuse concepts into technical legislation such as CEPA at this time. Biodiversity and the ecosystem approach concepts can be used and further developed without inclusion into an act. We propose more development work is required before any further consideration is given to inclusion of these concepts in CEPA.

- **Definitions:**

CPPA recognizes the need for clear, concise definitions of terms within CEPA. Some of the terms requiring clarification are:

Pollution Prevention: CPPA believes that a definition of Pollution Prevention must include off site reuse and recycling. These strategies are seen by the industry as legitimate, necessary and economically sound parts of the pollution prevention concept. It is important that any definition of Pollution Prevention within CEPA include them. The ISO definition of pollution prevention is becoming widely accepted because it recognizes recycling as an integral part of the strategy. The ISO definition is:

"The use of processes, practices, materials and energy that avoid, reduce or control pollution and that may include recycling, treatment process changes, control mechanisms, resource efficiency and material substitution."

Ecosystem Approach: CPPA agrees with the use of an integrated approach to environmental protection; an approach that recognizes that the individual components of ecosystems are integrated. We recognize that the definition of ecosystems used in the Convention on Biological Diversity is widely accepted. CPPA supports the concept of ecosystem approach being based on science. However, we would recommend additional consultation before defining ecosystem approach.

Biodiversity: CPPA recognizes that the definition of biological diversity used in the Convention on Biological Diversity is becoming widely accepted. Considering that biodiversity is such a diverse subject, we would, however, recommend additional consultation on the definition before including it in the Act.

Precautionary Principle: CPPA recognizes that the UNCED definition of the Precautionary Principle is becoming widely accepted. The intention of the principle is to use a reasonable precautionary approach that is based on fact, science and analysis. This is not always what happens. A current example of misuse is the attempt to use the precautionary principle as a rationale to eliminate AOX from pulp mill effluents in British Columbia. The principle can be interpreted in many ways and is too open-ended. Words such as "threats" and "decision makers" require definition. For example, the word "threat" must be defined to mean a threat brought to light by a recognized form of risk assessment. CPPA urges caution in the use of this principle in the interest of effective environmental protection and competitiveness.

- **Requirement for pollution prevention plans:**

Pollution prevention is not a new concept to the pulp and paper industry. Pollution prevention has always been the preferred approach to comply with standards under CEPA and other federal and provincial statutes. CPPA believes that the preparation of pollution prevention plans is an unnecessarily burdensome requirement which may impede continual improvement by requiring facilities to focus on current technology. There is no apparent need to include requirements for such plans in legislation and the concept should not be applied to anything other than very significant toxic risks. Safeguards would be required in these significant cases for justification, reasonableness and cost. The concept is considered to be duplicative of other requirements and is another example of a proposed requirement that crosses jurisdictional lines. Provinces are also currently involved in working with industry along these same lines and we discourage situations where different plans might be required by different levels of government.

We prefer to deal with pollution prevention through initiatives such as the joint industry-government agreement on closed loop technology and through the CPPA environmental management program now under development which requires clear establishment of environmental goals and objectives. This will accomplish similar objectives of effective environmental protection without legislation.

CHAPTER-BY-CHAPTER COMMENTS

Chapter 1 Guiding Principles for an Effective CEPA

- 1.1 The inclusion of the concepts of pollution prevention, the ecosystem approach, biodiversity, the precautionary principle and user/producer responsibility as guiding principles in a renewed CEPA is an ambitious undertaking that CPPA believes may be premature. The definitions of these concepts, especially biodiversity and the ecosystem approach, must be carefully developed in an open process and it must be recognized that ecosystem approach and biodiversity are dynamic, shifting concepts that are not yet clearly understood and, therefore, may not yet be appropriate concepts on which to build

a foundation for environmental protection. Additionally, there are other federal and provincial laws that already cover these themes. A goal in the CEPA review should be to eliminate duplications, rather than create new opportunities for them.

- 1.2 The definition of pollution prevention contained in the federal government's pollution prevention strategy is not acceptable in that it does not include reuse and recycling as a pollution prevention measure. There seems to be a consensus within industry for the adoption of the ISO definition which recognizes these important activities as part of the concept.
- 1.7 The UNCED definition of the precautionary principle is widely accepted and is now being proposed as the definition to be used within CEPA. The definition implies risk-basis analysis which is consistent with other stated government commitments within the Response. We earlier have commented on the need for a cautious approach and the need to protect against abuse of this principle.

Chapter 2 Administration

- 2.11 The Government Response comments on several agreements being signed with the provinces/territories and that many more are currently being negotiated. In most instances, there have not yet been true delegation agreements signed between the federal government and the provinces/territories but only administrative agreements. This introduces a risk for double prosecution in cases of non-compliance. Agreements covering environmental legislation were signed with several provinces. Only the Alberta agreement is of an equivalency type. Provisions within CEPA must recognize an actual provincial regulation as meeting the federal requirements. In such cases, the federal government should delegate all of its obligations to the province.
- 2.17 Including cost recovery provisions within CEPA requires some statement of the boundaries and direction the provisions would take. We propose that cost recovery be coordinated with the provinces and that consideration be given to using monies collected strictly for environmental protection.

Chapter 3 Public Participation

- 3.2 It is understood that the federal government will be required by the public to release more information. Communicating such information will require a technical understanding and must take into account the understanding of the audience. This will require additional expenditures of scarce resources.

- 3.6 Any regulation, such as the existing Section 108 of the current CEPA requires some discretionary language to ensure that frivolous or "obstructionist" claims are dealt with and dismissed early in the process.
- 3.9 We understand that the public has the right now to take civil action against someone that they feel has done them wrong. It appears that the government proposes limiting this right to taking action only after making application under Section 108. Current law is quite adequate in dealing with these types of issues.

Chapter 4 Ecosystem Science and National Norms

- 4.2 CPPA supports the government decision to continue reporting on the Canadian environmental status on a regular basis through a State of the Environment Report. More detail is required, however, on the type and relevance of information that could be requested at the discretion of the Minister. Safeguards are required for justification, reasonableness and cost. Discretion should not rest solely with the Minister - other federal departments should be involved.
- 4.3 We suggest that NPRI be improved through administrative tracks rather than through the legal track. CPPA anticipates being part of multistakeholder discussions regarding any proposed changes to NPRI.
- 4.7 CPPA supports the inclusion of "pollution prevention" in language describing codes of practice etc. "Recycling" and "reuse", however, should not be considered as separate entities but rather as a part of pollution prevention. This is consistent with the ISO definition of pollution prevention.

Chapter 5 Enforcement

The premise in Chapter 5 seems to be that there has been a lack of enforcement of CEPA, yet no evidence has been provided that there has been widespread noncompliance. Pulp and Paper sector compliance has been relatively good if not excellent. Moreover, this section fails to even mention the overlapping jurisdictional and enforcement problems of federal and provincial statutes. Proposals in this chapter would add more regulations and this compounds administration rather than streamlines it.

Chapter 6 Pollution Prevention

As stated earlier, we prefer to deal with pollution prevention through initiatives such as technology development and the CPPA environmental management program now under development. We believe our environmental management program will accomplish the objectives

of effective environmental protection without additional legislation. CPPA sees Pollution Prevention as a part of the solution to environmental problems.

- 6.7 Tracking pollution prevention progress in some general manner is acceptable. CPPA is concerned, however, that this initiative may lead to regulatory requirements on industry or enforcement requirements on government. Using NPRI to track progress should be developed through the consultative process as mentioned in 4.3.
- 6.12 CPPA believes the federal government should not consider additional regulations within CEPA affecting plans or responses to environmental emergencies. Generally, it is the province who takes a lead role in the direction and management of environmental emergencies that might arise in the facilities of our industry. There is little or no federal recognition of the existing provincial and municipal emergency response systems. Also, our industry is already regulated under the Transportation of Dangerous Goods Act and we support MILAC initiatives.

6.17 CPPA feels the development of a national spill-reporting network could be accomplished through cooperation with the provinces most of whom already collect the data.

Chapter 7 Biotechnology

This entire chapter appears to propose applying existing CEPA authority to living and non-living products as would otherwise be applied to chemical products. It is difficult to comment on this chapter until the government actually puts words to their intentions.

Chapter 8 Controlling Pollution and Wastes

Definition of waste: CPPA supports a definition of waste which includes criteria to distinguish among wastes for final disposal, recyclable materials and products. Since there is no advantage to the pulp and paper industry in disposing of valuable materials to landfill etc., our industry practices reuse, recycling and recovery. The CEPA focus should be on the elimination or the final disposal of hazardous wastes and not on waste management which is already covered by provincial regulation.

- 8.1 If establishing a framework to control air pollution is to go forward, there is a requirement for an explicit process for ensuring cooperation, consulting and recognizing provincial jurisdiction. The process should be developed cooperatively.
- 8.12 The definition of waste to be used in OECD must be developed in consultation with and be consistent with the provincial definitions. Secondary materials bound for reuse or recycling should not be defined as waste.

- 8.15 There are potential markets in the management of hazardous waste materials. Industry will continue to generate certain amounts of hazardous waste which will require properly managed disposal strategies. It would not be feasible to prepare waste reduction plans for these. The proposal appears to penalize facilities that are not in close proximity to a domestic destruction facility. Also, this proposal must be carefully worded in order to correctly define "hazardous waste" and "disposal." For example, heavy liquor from a kraft mill might be defined incorrectly as hazardous waste. This material is sometimes sold to another kraft mill for reprocessing in a recovery boiler.
- 8.18 CPPA believes CEPA should not include authority to deal with non-hazardous wastes since provinces already manage the issue.
- 8.20 This section is confusing and requires clarification. We anticipate being part of further discussions once the proposal is clarified.

The section on ocean disposal does not mention the problem of stringent standards. Currently the standards are not consistent with the standards proposed to deal with other methods of disposal. The industry has been concerned for some time about the apparent ad-hoc imposition of ocean disposal regulations. It is our view that the ocean disposal standards were introduced in the absence of any discussion with the industry and without any apparent scientific risk assessment of potential contaminants. For example, dioxin standards have been absolute zero and screening standards have been used in the past as pass/fail standards. The development of standards for ocean disposal under CEPA must be carried out in an open forum and must comprise science based risk assessment.

- 8.27 Requirements of the Waste Assessment Framework should be covered by comprehensive cost-benefit analysis and not by individual permits for each application.
- 8.35 There should be an opportunity provided for an applicant to make minor amendments without going through a public review process.

Chapter 9 Controlling Toxic Substances

- 9.2 CPPA supports examining any substances to determine toxicity under CEPA by using a risk assessment process that would be consistent with the TSMP.
- 9.5 CPPA recommends that no substance be declared toxic without examination through a risk assessment approach. It is essential that a toxic designation under CEPA be based on risk of exposure to the substance.

- 9.7 Definition of virtual elimination: CPPA proposes that the definition of virtual elimination be consistent with that adopted by the IJC: "*Virtual elimination is the net reduction in the environment of bioaccumulative persistent substances to levels where there are no toxic effects.*" The focus of virtual elimination must remain on discharges, not on use.
- 9.8 CPPA cautions against deeming substances toxic. The determination must be exposure based and should incorporate scientifically sound risk assessment.

Chapter 10 Government Operations, Federal Lands & Aboriginal Lands

- 10.7 CPPA would welcome the same opportunity being afforded here to "other federal entities." That is, to have the opportunity for meaningful input into discussing which "emissions or other releases that threaten the surrounding community" to address first.
- 10.10 CPPA supports the application of equivalent environmental laws by Aboriginal Peoples with self governing regimes as long as current users are consulted. Also, the identical opportunity to use equivalency laws should be afforded the provinces and territories.

CSDA

Canadian Soft Drink Association
Association canadienne de
l'industrie des boissons gazeuses

ACIBG

March 21, 1996

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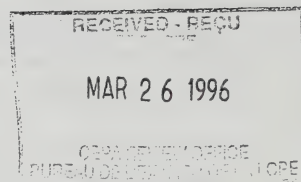
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Ruth Wherry
Manager
CEPA Office
Environment Canada
Place Vincent Massey 15th Floor
Hull QC K1A 0H3



Dear Ms. Wherry:

The Canadian Soft Drink Association (CSDA) represents the manufacturers and distributors of carbonated soft drink products, as well as their suppliers. We have had an opportunity to review *Environmental Protection Legislation Designed for the Future - A Renewed CEPA*, the Government's response to recommendations by the Standing Committee on Environment and Sustainable Development. While much of the scope of the Canadian Environmental Protection Act (CEPA) falls outside the realm of the Canadian soft drink industry, we offer the following comments on some specific parts of the Government Response.

The Need for a Cooperative Approach

CSDA wishes to point out that for environmental protection to be successful, industry needs to be included within any forum involving a cooperative approach. Industry can assist federal and provincial governments in developing a better understanding of the potential economic as well as environmental impacts of any measures being contemplated.

Jobs and Growth and "Good" Regulation

CSDA agrees that any federal or provincial regulations should be based on science, consider the economic impact, but not be inflexible. Regulations should provide industry the flexibility to innovate and respond to new technologies. Any regulations should set targets and goals, rather than prescribe the means to achieve them and possibly stifle a novel solution.

User/Producer Responsibility

CSDA agrees with the government's position that further work is needed to clarify the concept of use/producer responsibility, including to whom and how the concept applies (Section 1.9). Environment Canada might look to some of the multi-stakeholder work on stewardship carried out under the auspices of the Canadian Council of Ministers of the Environment (CCME).



Economic Instruments

CSDA notes that in their report the federal government has restated its commitment "to enable the use of tradeable permit systems, deposit-refund programmes, and direct financial incentives in CEPA, or other appropriate federal statutes." (Section 2.13) CSDA acknowledges that deposit-refund programmes may be suitable for dealing with some materials – for example, hard-to-dispose items such as used tires, or hazardous materials like batteries, chemical drums, etc.

CSDA cautions the federal government, however, against using mandatory deposit-refund schemes to deal with non-hazardous materials which are more effectively dealt with through comprehensive recovery approaches. For example, despite the fact that beverage containers only comprise about two per cent of the waste stream, several Canadian provinces have chosen to apply deposits on these containers to promote their recovery. This is an extremely costly method – for both consumers and industry – to collect benign packaging materials which could be more cost-effectively recovered through a multi-material recycling approach. Studies have shown that recovery through deposit-refund programs costs consumers as much as \$2,400 per tonne of materials collected, in contrast to curbside recycling where the revenue from collected materials generally covers the costs of collection and processing the recyclable materials.

User pay or polluter pay charges such as environmental levies, fees, taxes, etc. should be applied to materials and/or products equitably, and decisions on whether to implement these charges should be based on sound scientific and economic data.

CSDA agrees with the government that implementation of any economic instrument such as deposit-refund programmes should follow a evaluation of all options, with assessment of all impacts, etc., and be conducted through a consultative process involving the affected parties plus other stakeholders.

CSDA appreciates this opportunity to provide our industry's positions on several of the proposed changes to CEPA. We ask that Environment Canada continue to keep CSDA apprised of future developments in the updating and renewal of the Canadian Environmental Protection Act.

Kind regards,



Anthony van Heyningen
Manager, Environmental Affairs



Canadian Steel Producers Association
L'Association canadienne des producteurs d'acier

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March 20, 1996

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Reçu-UCM-MDE

The Honourable Sergio Marchi, P.C., M.P.
Minister of the Environment
Les Terrasses de la Chaudière
10 Wellington Street
Hull, Quebec
K1A 0H3

Dear Minister Marchi:

Attached is a brief prepared by the Canadian Steel Producers Association in response to the Government's proposals, tabled in December, for changes to the Canadian Environmental Protection Act. We welcome the opportunity to comment on the proposals. We support most of the core principles underlying the response, and endorse the Government's recognition of sustainable development as the primary objective of a new CEPA.

However, we have important reservations about certain aspects of the proposals. These are outlined in our brief, and we believe they should be dealt with before legislation is introduced into Parliament. To highlight our concerns:

1. The resources of both governments and the private sector are scarce. Yet many of the proposals appear to imply further federal participation in areas of provincial activity or jurisdiction. This is inconsistent with the objectives of federal-provincial discussions on harmonization and adds to the cost and complexity of achieving environmental objectives.
2. To achieve the best results environmental efforts must be allocated rationally. A reasonable assessment of risk and cost must underlie this allocation. The Government's response does not reflect consistently enough the need to apply the principles of risk assessment and risk management in setting priorities and identifying appropriate control strategies. Risk is inevitable. That fact must be recognized and directly-affected stakeholders engaged in decisions about acceptable risk levels in a context of sustainable development.

3. It is premature to legislate the Toxic Systems Management Policy. The policy is new. The task of interpreting and applying it in a context of scientific and technological change is complex. At this stage it would be unwise to incorporate the policy in legislation, since this would reduce the Government's flexibility to make adjustments in the light of experience. If the Government decides to legislate the policy despite this consideration, certain clarifications must be brought to the policy first.
4. The proposed role for the federal government in relation to pollution prevention is highly intrusive and the proposed authorities for the government to gather and publish information are large and insufficiently-controlled.

Our association represents all of Canada's primary steel producers. Our member companies operate in six provinces and employ 32,000 Canadians. Over a third of our \$10 billion in annual sales go to exports, and competition is intense in both domestic and foreign markets.

Our industry has made and will continue to make significant improvements in environmental performance. As we stated in our response to the Caccia Report, the main obstacle to progress is the scarcity of resources and tools available to both governments and companies: scientific information, systems for measuring and controlling minute quantities of invisible substances, substitute technologies. We continue to believe that the best contribution governments can make is to set the guidelines for change and help remove the obstacles in the way.

Representatives of our association would be pleased to meet with you or your officials to explain our ideas further.

We are sending copies of our brief to other interested Ministers and to members of the Steel Caucus.

Yours sincerely,



(Mrs.) Jean Van Loon,
President

- cc. The Honourable David Dingwall, Minister of Health
The Honourable Anne McLellan, Minister of Natural Resources.
The Honourable John Manley, Minister of Industry
The Honourable Paul Martin, Minister of Finance
The Honourable Lloyd Axworthy, Minister of Foreign Affairs
The Honourable Ralph Goodale, Minister of Agriculture
Mel Cappe, Deputy Minister, Environment Canada
Members of the Parliamentary Steel Caucus



Canadian Steel Producers Association
L'Association canadienne des producteurs d'acier

BRIEF
IN RESPONSE TO THE PROPOSALS OF THE GOVERNMENT OF CANADA
FOR A RENEWED CEPA

CANADIAN STEEL PRODUCERS ASSOCIATION

MARCH, 1996

BRIEF IN RESPONSE TO PROPOSALS FOR A RENEWED CEPA

CANADIAN STEEL PRODUCERS ASSOCIATION

KEY POINTS

Chapter 1: Guiding Principles

- *The set of principles appropriate. They must be applied in a balanced fashion, taking account of a rigorous, science-based assessment of risks and costs. The principle of user-producer responsibility requires further development.*

Chapter 2: Administration

- *Efforts to reduce duplication and the multiplicity of government interlocutors with business are critical. Inter-jurisdictional agreements do not in themselves remove overlap.*
- *The use of economic incentives should be explored further, in consultation with the public. Such instruments should not become a pretext for new taxes.*
- *The proposed authority to use cost recovery is based on a vague concept of "service of a beneficial nature". This concept requires further clarification.*

Chapter 3: Public Participation

- *The proposal to create an extensive public information registry needs to be balanced with protection for legitimate business needs for confidentiality.*
- *Proposed protections for whistle-blowers and requirements for Ministerial reports on investigations need to be balanced by protections against abuse.*

Chapter 4: Ecosystem Science and National Norms

- *We strongly support efforts to expand and improve the base of scientific knowledge with respect to the environment.*
- *The proposed government authority to gather and publish information is too broad and subject to inadequate checks. A stronger check is needed to ensure that data burdens are minimized, cost-effectiveness achieved, and legitimate needs for confidentiality respected.*
- *We do not support a rigid country-wide approach to all problems. National standards should not be a pretext for intrusion into provincial areas of jurisdiction.*

Chapter 5: Enforcement

- *The bottom line objective is a cleaner safer environment. The proposals place too great an emphasis on expanding enforcement and sanctions and not enough on supporting voluntary efforts and education, encouraging the development of third-party standards and auditing capacity and expanding scientific information.*
- *There should be protection against sanction for companies which undertake voluntary self-assessment of compliance and voluntarily report problems.*
- *Before the government seeks legislative authority for Administrative Monetary Penalties there should be further assessment of such issues as constitutional authority, limits, controls and training.*
- *The courts should not be used as a fund-raising device for general environmental purposes. Court awards should be directly related to the wrongful conduct.*

Chapter 6: Pollution Prevention

- *Pollution prevention is a sound approach and should be strongly supported.*
- *The proposals to require pollution prevention plans across the board are intrusive, heavy-handed, inflexible and bureaucratic. They should not be put into CEPA.*
- *Governments should foster pollution prevention through developing and publicizing guidelines based on best practices, fostering the exchange of information and promoting the recognition of industry leaders.*

Chapter 7: Biotechnology

- *We endorse the Government's recognition of the environmental and economic benefits of biotechnology and its statement of intent with respect to a regulatory regime for biotechnology.*
- *Bioremediation technologies have demonstrated their effectiveness in the steel industry. Any "safety net" for biotechnology products should avoid duplication with existing regulations and involve public consultations.*

Chapter 8: Controlling Pollution and Wastes

- *The proposals with respect to federal standards for air pollution do not respect provincial jurisdiction and interests and are directly contrary to the harmonization proposals developed under the Canadian Council of Ministers of the Environment. They would set an unacceptable principle for international agreements on the control of other substances such as toxics.*
- *The Government should develop a realistic definition of waste and not refer to recyclable materials as waste. A waste is only a waste at the point of final disposal.*
- *There is no economic or environmental justification for the notion, underlying the federal proposals for CEPA, that every country should be responsible for disposing of its own hazardous or non-hazardous waste. The goal should be to have responsible and cost-effective disposal.*
- *The federal government should not control interprovincial shipments of hazardous recyclables.*

Chapter 9: Controlling Toxic Substances

- *We support the Government's position that an assessment of risk must underlie the determination of what substances are toxic. We support the retention of Section 11 of CEPA. We recommend development of guidelines for risk-based decisionmaking, in consultation with experts and stakeholders.*
- *The principle of risk-based decisionmaking should be applied consistently under the Toxic Substances Management Policy, and stakeholders directly concerned should be involved in decisions about acceptable risks and costs. This would require refinement of the policy. As it stands, the policy should not be encoded in legislation.*
- *It would be premature to legislate a definition of "virtual elimination" under the Toxic Substances Management Policy.*
- *The Government should take advantage of the scientific information gathered by other jurisdictions in designating substances for ban or sunset, but should conduct its own risk assessment to determine appropriate controls for Canada.*
- *The proposed timetables and processes for controlling substances designated toxic are unrealistic and should be amended.*

Chapter 10: Government Operations

- *The federal government should do at least what it expects others to do.*

BRIEF IN RESPONSE TO PROPOSALS FOR A RENEWED CEPA

CANADIAN STEEL PRODUCERS ASSOCIATION

Introduction

Canada's steel producers welcome the opportunity to comment on the Government's proposals for a renewed Canadian Environmental Protection Act. The new legislation is extremely important. It will set the framework within which Canadians will address a range of important environmental issues for many years. It will also set the tone for the kinds of working relationships that there will be between citizens, companies and governments. For these reasons we have chosen to comment in detail on the proposals rather than simply highlight major concerns.

Canada's steel producers recognize that there are important environmental challenges to be met. We recognize that environmental considerations must be built into business decisionmaking, and have made notable progress toward that goal. We believe, however, that governments need to make more progress in building business criteria into their environmental decisionmaking. Linking the goals of environmental responsibility and cost-effectiveness is the key to sustainable development.

Our brief follows the structure of the Government's document *Environmental Protection Legislation Designed for the Future - A Renewed CEPA*.

Chapter 1: Guiding Principles

Overall, our industry supports the principles which have been set out in this chapter. We applaud the establishment of sustainable development as the primary objective of the new CEPA. Subject to the cautions outlined below, we also support the additional principles recommended for CEPA: Intergovernmental Cooperation, *Science* and the Precautionary Principle, and Economic Responsibility.

The key to achieving sustainable development in Canada will be in how these various principles are interpreted and balanced. A rigorous assessment of risks and costs must be at the heart of the balancing process. It is not possible to eliminate risk in the domain of the environment any more than any other aspect of life. If we really took the position of zero risk we would never get in a car and never take medicine — decisions which would of course engender their own risks. Furthermore, the achievement of different levels of risk entails different costs. And the decision to make high-cost efforts in one area of concern leads to reduced resources available for others. Canadian stakeholders need to be involved in determining what are the acceptable levels of risk and cost for various goals for the environment.

Two examples illustrate the need for balance and care in the application of the guiding principles. The principle of user/producer responsibility could entail unacceptable economic costs if, as the government document hints, it is to be interpreted as "polluter pays". Canadians must recognize first that not all producers operating in a competitive marketplace will be able to pass on costs generated by a particular environmental objective while staying in business. Nor will all be able to assume the risk of liabilities from civil actions. Canadians must recognize second that there are positive externalities from economic activity (benefits to employees, the surrounding

community, linked industries) as well as negative externalities from environmental impacts. We support the notion that there must be further work to clarify the meaning of user/producer responsibility and suggest that the concept of "beneficiary pays" be examined. This is consistent with the principle of economic responsibility and sustainable development.

As a second example, let us look at Science and the Precautionary Principle. The reaffirmation of the importance of science and the adoption of the UNCED definition of the Precautionary Principle are important and welcome. However, the Precautionary Principle must be interpreted in a sensible way. In consultation with the direct stakeholders we must identify acceptable levels of risk using the best information we can get, recognizing that we have a responsibility to minimize risk, but we cannot eliminate it. Technically possible levels may not be affordable.

In the detailed chapters of the Government's response we believe there are many examples where the proposals are not consistent with a balanced application of the above-mentioned principles. This is likely to cause unnecessary burdens to those managing environmental responsibilities, create overlap with or intrusion into provincial areas of responsibilities, and add unnecessarily to the cost of environmental improvements. Our concerns and suggestions for how to accommodate them are outlined in detail below.

Chapter 2: Administration

We welcome the government's reaffirmation in this chapter of its desire to work harmoniously with other jurisdictions and to strike agreements with them so as to minimize overlap and duplication. The mere fact of an agreement, however, does not necessarily remove duplication and overlap. Indeed, in the Ontario area, steelmakers have first-hand experience of agreements that create duplication. The Canada-Ontario Agreement and the Bi-National Agreement with the USA related to the Great Lakes have resulted in adding to the initiatives already underway at federal and provincial levels and adding still more groups of officials with whom industry have been asked to work. The result is needless overhead for both governments and companies.

We agree with the proposal to explore greater reliance on economic rather than regulatory controls to achieve environmental goals, provided that they are not a pretext for an increase in taxation. We also welcome the government's emphasis on public consultation before the introduction of any specific regulations for economic instruments, its proposal to leave responsibility for any tax measures with the Minister of Finance, and its recognition of the potential contribution of voluntary undertakings.

The proposal should be strengthened however by explicit recognition of the additional ways in which the government could accelerate improvements in environmental performance: stimulating inter-industry problem solving, promoting the dissemination of best practices, facilitating technology transfer. The government should also explicitly recognize the importance of its role in removing impediments to environmentally-responsible behaviour. For example, if pollution prevention is interpreted in such a way as to prevent cost-effective off-site recycling of materials generated in a particular facility, this works against the goal of sustainable development.

In implementing initiatives with respect to economic instruments or cost recovery, it is critical to take account of the effects on incentives and the impact of cost burdens. It is not clear what the government intends in its phrase in section 2.17 about cost recovery for "service of a beneficial nature". There does not appear to be any control proposed on the interpretation of this very fuzzy phrase or on the cost recovery mechanisms that might be put in place for these allegedly beneficial services.

Chapter 3: Public Participation

The Government response (clause 3.2 p. 24) calls for the creation of an extensive public information registry. Access to appropriate information is obviously essential to informed public participation. However, this goal must be balanced by a recognition of the realities of commercial life. There is inadequate attention in the proposal to the need for confidentiality of sensitive information.

There must be appropriate protections in any legislative provisions for business information, particularly that with competitive implications. There must also be a recognition that information which initially did not have competitive implications could become sensitive because of changing business conditions. For example, a company could provide information in good faith about a substance that today has little commercial significance. This same substance could later become a significant raw material for other processes or a semi-finished product that other businesses may use to make saleable products. There must be mechanisms to allow information to be designated confidential after submission.

Further, any public registry must be structured to avoid release of information that could adversely affect the development and proprietary rights over new technologies. To do otherwise is self-defeating, since it will create a disincentive for technological innovation.

The proposal (clause 3.3) to fund the registry process through cost recovery provides an example of the difficulty of applying the concept of "beneficial services." The easiest approach for the government to take would likely be to charge those who must provide the information for the cost of collecting and storing it and making it available. But are these the beneficiaries? They are already bearing the cost of providing the information for the benefit of others. This illustrates the need mentioned in relation to Chapter 2 for clarification of the principles of cost recovery to be followed.

The proposals raised in clauses 3.5 to 3.9 raise some potentially serious risks. Section 3.5, for example, would introduce a mandatory requirement for the Minister to issue a final report on any investigation under Section 109 or any actions taken pursuant to Section 108 regardless of whether any legal action was taken. Yet there is no protection offered to the Minister against abuse of process. The Minister under the proposed measure would be exposed to needless risk and expense, as would all those involved in the investigation.

Similarly, in the interest of fairness there is a need under the whistle-blower section (clause 3.8) for some protection for affected parties against wanton, reckless and inappropriate accusations. Any new legislative provision should include measures to ensure some accountability on the part of those who make accusations. Our association has similar concerns about clause 3.9 proposing a right for citizens to take civil action against anyone thought to have violated the provisions of CEPA. The legal tradition of equitable remedies provides some guidance here.

In this light, we agree with the Government's conclusion that there is a need for further research on the implications of allowing a right of citizens to take civil action against environmental risk. The potential for abuse of this type of power is considerable.

Chapter 4: Ecosystem Science and National Norms

The Canadian steel industry supports a federal initiative in developing the base of scientific information especially for risk assessment, on which a rational environmental regime depends. Indeed we regard this as urgent.

The scope of the authority proposed for the Minister of the Environment is broad and virtually unchecked. Under the proposed authority it is totally within the discretion of the Minister to collect a vast range of information whether or not it relates to emissions to the environment. The only constraint is that the Minister "consult" the Minister responsible for Statistics Canada before collecting State of the Environment data and that the Minister believe the intended data collection is necessary and cost-effective. This is not a strong enough check to protect Canadian companies and other organizations required to provide the information.

It is also proposed that most of this information be made public unless the company concerned can make a case for confidentiality. The information which could be published includes individual companies' pollution prevention plans, which as prescribed in the government's proposals (6.4) would include such detailed internal information as purchasing and processing activities. This goes well beyond what is needed either to understand ecosystems or determine the results of environmental improvement efforts. It is inappropriate and will actually discourage pollution prevention.

There must be a stronger check on the arbitrary power of a minister to demand and publish such information. One way, consistent with the principle of Economic Responsibility, would be to require the concurrence of economic ministers (Industry, Natural Resources, Transport) for information-gathering plans of the Minister of the Environment. Another way would be to have Statistics Canada do the collection, since it has experience in weighing the public need for information against the public need for cost-effectiveness and the private sector need for confidentiality and minimized data burdens.

Our industry is also concerned about how the government's proposals with respect to National Norms may be interpreted. We support and urge efforts to develop guidelines and codes of practice on a national basis if these are used to facilitate the rapid spread of best practices in environmental management. We also support joint efforts across the country to establish performance goals.

We do not support a rigid country-wide approach to all problems. The response quotes with favour a conclusion of the Caccia Report, "Only national standards can ensure the right of all Canadians to the same minimum levels of health and environmental protection." In our view this statement, while true in some instances, is open to challenge in others. Different communities face different concentrations of population and industry and may have different capacities to absorb or remove pollutants naturally. In some cases it is therefore appropriate to have different approaches within Canada to priority-setting and action with respect to environmental issues.

We would strongly oppose a reliance on national standards if this is interpreted to mean that all parts of the country must take the same sorts of actions in different circumstances. Nor do we regard federal commitments to continue "dialogue" with the provinces as adequate deference to the principle of intergovernmental cooperation. Provincial governments have in the main been active in the area of the environment for longer than the federal government, and a reference to the theoretical benefits of national standards should not be a pretext for the federal government to intrude in areas of provincial jurisdiction.

Chapter 5: Enforcement

The bottom line of all environmental efforts must be a cleaner safer environment. For this reason our association applauds the affirmation by the Government of Canada that its goal is compliance by Canadians with its laws. In fact, we believe that Canadians may well do better than that. In our view, if companies are successful in building environmental considerations into their business planning and operations, and if they are committed to continuous improvement, they may often surpass mere compliance with the law.

We also believe, that if performance is really the objective, there is far too much focus on sanctions. The government could play a much more productive role for the longer term by supporting voluntary efforts and education, encouraging the development of third party standards and auditing capacity and contributing scientific effort to problem-solving.

The Government must provide protection against sanctions from companies which, in the course of self-administered audits, identify environmental violations and report them voluntarily. This is especially important given the proposals for a public right to civil action for violations of CEPA. We commend for consideration the approach taken by the Ontario government on this issue. A number of U.S. states have also passed laws to provide this type of protection.

We do recognize that there will be some who do not respect the laws and regulations. There is therefore a need for control and enforcement mechanisms. We would like to sound some notes of caution about some of the specific proposals of this chapter.

The Government proposal may overstate the attractions of Administrative Monetary Penalties and the extent of experience with them, especially in applying them to environmental concerns. The experience with AMP's under the U.S. Occupational Health and Safety Act has included allegations of abuse and raised issues of how to control and train inspectors authorized to levy fines and how to set appropriate limits on penalties. Such issues must be considered in detail before any AMP's are introduced. We understand that the U.S. Environmental Protection Agency has not yet implemented AMP's or completed development of the necessary regulations under the Clean Air Act. We are also concerned about the implications for duplication of provincial enforcement activities, constitutional authority, limits, controls and training as well as the implications for protecting the rights of Canadians as established under our legal traditions. We believe therefore that it is premature to introduce this concept into CEPA.

Of particular concern in this chapter are the proposals with respect to new powers for inspectors and analysts. These appear to add up to preparations not to succeed with federal-provincial harmonization. We do not accept the notion that Canada's enforcement efforts have been inadequate and do not support the idea of new officers with new broad powers as outlined in sections 5.8, 5.9 and 5.10.

The Government proposes in section 5.14 to allow court awards to be directed to specific purposes which may have nothing to do with the area in which the offence took place. We are concerned at the principle of having the penalty disconnected from the wrongful conduct. This is contrary to the well entrenched and understood concept of "natural and logical consequences". The courts should not be used as a fundraising device.

Chapter 6: Pollution Prevention

Pollution prevention is an approach, philosophy and attitude which the steel industry strongly endorses.

However, we are extremely uneasy with the way the Government intends to foster it. We cannot support legislation along the lines proposed.

The proposed approach is highly intrusive. It departs entirely from the principle of focussing on results, and gets into detailed prescriptions for how companies should manage themselves internally. This is unacceptable.

It also departs from the direction in which leading companies are moving for environmental management. The way of the future, consistent with truly sustainable development, is to integrate environmental considerations, including pollution prevention planning and continuous improvement, into overall business planning. Yet the Government is prescribing separate plans for pollution prevention. It is also proposing that the plans be made public, which no company could accept for integrated business plans.

There is much that the Government could and should do to promote pollution prevention. But it does not include legislating a particularly paper-heavy set of instructions in an area where management practices are evolving rapidly. It would be much more productive for the federal government to develop guidelines based on best practices, foster the exchange of information about best practices and promote recognition of industry leaders.

The proposal for research and demonstration projects under section 6.9 is the type of initiative that is needed, as are the proposals for an awards program (section 6.11) and for a possible national spill-reporting network in collaboration with the provinces and territories (section 6.17) provided that it does not involve duplicating reporting requirements so as to serve two levels of government. In these ways the government can provide the tools to make good things happen faster. It is not clear, however, why there is a need for further legislative authority for this or for gathering information, given the sweeping proposals for information gathering elsewhere in the Response.

The proposals under sections 6.12, 6.13, 6.14 and 6.16 appear to insert the federal government into areas of provincial jurisdiction. The federal government may have a role as an expert advisor in preparing codes of practice and guidelines. This could be done without special authority under CEPA. But these recommendations go beyond that and propose to give the federal government authority to become directly involved in local or provincial matters via standards. Of particular concern are 6.16 and 6.18, which intrude into provincial responsibility for contaminated sites and will result in conflicts with provincial legislation. Provincial governments already have provisions for cost recovery. There is no need to duplicate this. It would be a far more constructive role for the federal government to help fast track the development of the science to support the designation and evaluation of the risk of contaminated sites.

Chapter 7: Biotechnology

Our association is pleased that the Government of Canada recognizes both the environmental and economic benefits that biotechnology can bring to Canadians. We fully support the Government's position as stated on page 51: "The Government of Canada wants to ensure that we have a regulatory regime in place which promotes innovation, encourages investment in biotechnology, supports technology transfer, and places Canadians at a competitive advantage."

We urge that if, as proposed, a separate part of CEPA is created to deal with living products of biotechnology or if any part of CEPA is changed to provide for what the Government refers to as a "safety net" for biotechnology products, then the government should follow through with its commitment to avoid duplication with existing regulations and to consult with interested stakeholders. It would be most regrettable if new rules hampered the use of bioremediation technologies, which are proving highly effective in the steel industry.

Chapter 8: Controlling Pollution and Wastes

The proposals in this chapter raise concerns with respect to jurisdictional issues and the creation of non-productive bureaucratic overhead and paperwork. They also raise a number of serious concerns about narrowness and rigidity in the definition of waste and in approaches to dealing with it.

Air Pollution

The proposals under sections 8.1 open the door for unilateral federal establishment of standards for air pollution. The federal government would be authorized to regulate to meet whatever undertakings it had negotiated internationally after mere consultation with the provinces. There is no requirement for the provinces to agree and no commitment on the part of the federal government to take their views into account in negotiating the international agreements in the first place.

These proposals are directly contrary to the harmonization proposals developed under the Canadian Council of Ministers of the Environment, which call for full participation of the provinces in developing any national standards. The same concern applies to international agreements on other environmental issues such as controlling toxic substances. This is not acceptable.

We welcome the Government's interest in such economic instruments as emissions trading. Our industry has been working with governments to explore the potential of such instruments. While there are still many concerns to be resolved, we believe in principle it is worth pursuing work in this area.

Fuel Standards and Motor Vehicle Emissions

The regulation of these issues has complex implications. We urge that the legislation make it clear that these regulations like all others under the Act will focus on performance, be based on risk assessment and will be designed to minimize costs.

Waste Reduction

The steel industry supports efforts to reduce or prevent waste. Our own experience has shown the economic benefits of converting potential waste material into inputs or products. We therefore support the statements of principle on page 58.

An appropriate definition of waste (sections 8.12, 8.13 and 8.19) is critical to managing resources effectively. We are pleased that Canada is working to develop an appropriate definition. The experience with the Basel Convention has shown how counterproductive a narrow definition can be and how it can open the door to unjustified trade barriers.

Canada must be certain to adopt a definition that will avoid needless barriers to cost-effective and environmentally-sound measures for handling process by-products. We are therefore concerned that the Response continues to refer to recyclable materials as waste. A waste is only a waste at the point of final disposal. If a material is recycled or used as an input in another process it should be considered a raw material, not a waste. Canada must also be on guard against designating a material as a waste simply because of residuals that may be created in using it.

We strongly object to the principle underlying section 8.14 - 8.17, namely that every country should be responsible for handling its own hazardous wastes. There is no environmental or economic justification for this principle. It can only introduce unnecessary regulation, greater cost in hazardous waste disposal and - given Canada's geography - greater risks associated with transporting hazardous substances over greater distances. If the goal is safe and responsible handling of hazardous materials, the only relevant criterion is whether they are going to a responsibly-managed disposal site. Regulation should be confined to ensuring that objective in the least intrusive fashion.

Even more strongly, we object to the same principle being applied to the handling of non-hazardous wastes as proposed in sections 8.18 and 8.19.

The proposal (section 8.20) to control interprovincial shipments of hazardous recyclables entails intrusions into provincial jurisdiction and increased levels of bureaucracy and cost for no identifiable environmental gain. In addition, they would penalize smaller provinces which may not have their own facilities. This is in direct opposition to the principles of open trade within the Canadian domestic market.

Given our objections to the substantive proposals for greater federal authority in regulating shipments of wastes we do not support using cost-recovery to achieve them.

The Government indicates that it is currently working on a draft international protocol on the matter of liability and compensation arising out of the transboundary movement of hazardous wastes. This is an issue which should be the subject of active stakeholder consultation, to ensure that the structure of any protocol does not unfairly penalize any class of shippers.

Chapter 9: Controlling Toxic Substances

The Canadian steel industry supports the Government's proposal to set priorities for screening and assessing substances under CEPA.

We also support the proposal that the Federal Government not automatically adopt substance bans or restrictions adopted by other governments. We are pleased that the response acknowledges that such decisions may be based on considerations not relevant to Canada. However, we are concerned about the ambiguity in sections 9.2 and 9.8 as to how substances designated as toxic in other jurisdictions will be treated. We believe that the Government of Canada should take advantage of any scientific evidence that has been produced by other jurisdictions in the course of their assessments, but should treat the substance concerned strictly in conformity with Canada's own criteria for setting priorities and conducting assessments.

The Canadian steel industry strongly supports the Government's position that an assessment of risk must underlie the determination of what substances are toxic. For this reason we strongly support the decision to retain the concepts of entry, exposure and effects under Section 11 of CEPA. We propose that the legislative measures be complemented by detailed guidelines as

to how risk-based decisionmaking will be carried out and that these guidelines be developed in consultation with experts and stakeholders. Risk-based decisionmaking is essential to ensuring that efforts are concentrated where they will produce the greatest benefit for Canadians.

We are concerned, however, that the Toxic Substances Management Policy departs from the principles of risk assessment. We do not agree that persistence and bioaccumulation, when combined with toxicity, should be used as surrogates for potential harmful exposure. There are costs but no associated benefits from eliminating substances that may never enter the environment in harmful concentrations. And these costs reduce the resources available to deal with other more real problems.

The difficulties which result from this departure from risk-based decisionmaking are magnified by the fact that the criteria adopted to establish persistence and bioaccumulation were designed for organic compounds and are ill-suited to metals. It would be premature to enshrine these criteria in regulations.

The Toxic Substances Management Policy also departs from the principle of risk-based decisionmaking in the determination of control strategies. In the case of substances which are bioaccumulative, persistent, inherently toxic and man-made, it declares that the only acceptable management strategy is virtual elimination, no matter how little likelihood there may be of exposure in significant concentrations. Oxygen, breathed in its purest form for an extended period, is toxic. We must be realistic about what levels of exposure and dosage are dangerous.

The proposal (9.16) that industry can provide evidence to contradict a requirement for virtual elimination is an inadequate safety valve, because the only evidence which will be considered must relate to the original non-risk-based criteria for designating a substance for virtual elimination.

As it stands, the Toxic Substances Management Policy should not be entrenched in legislation. It should be modified to respect consistently the principle of risk-based decision-making. Stakeholders must be involved in decisions about acceptable risk, if the goal of sustainable development is to be achieved. If we focus our efforts on substances that do not genuinely pose a risk, we create a different risk - of wasted resources.

The Government proposes to incorporate in legislation a definition of "virtual elimination" under the Toxic Substances Management Policy. This proposal is premature. The difficulty of achieving a definition which is both effective and economically- and socially- sustainable is evident from the ambiguities that remain in the text of the TSMP. It would be foolish to entrench any definition until experience has permitted all stakeholders to assess what is an effective and reasonable definition. A realistic definition must take account of acceptable levels of risk.

The Government proposes that there be a legislated timetable to control substances assessed as toxic (9.14 to 9.16). While this would provide a clear framework for all stakeholders, the idea is not fully developed in the Response. For example, the Government indicates that "industry proposals" would be required within a specific period. This language presumes that industry is the only possible source of designated substances. This presumption is wrong. Municipal incinerators and personal transportation are also important sources.

The language also implies that all sources should be required to submit control proposals, no matter how insignificant the source may be in the overall context and although many sources may already have control systems in place under provincial regulation or existing federal programs. The language should be modified to make it clear that sources from any sector of Canadian life - municipalities, hospitals, research institutes, governments - would be required to submit plans.

but only if they are major sources and are not already managing the substances through other programs or regulations.

The proposed deadlines are unrealistic, given the need to determine what the major sources or users of toxic substances are and the processes of engineering, design and construction that may be needed to implement the control plans.

Chapter 10: Government Operations, Federal Lands and Aboriginal Lands

We support the principle that the government must do at least as much as it demands that others do.



RECEIVED
MINISTER OF
ENVIRONMENT

CANADIAN UNION OF PUBLIC EMPLOYEES / SYNDICAT CANADIEN DE LA FONCTION PUBLIQUE
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March 21, 1996

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Rec'd-DCU-DOE

The Honourable Sergio Marchi
Minister of the Environment
House of Commons
Room 509-S, Centre Block
OTTAWA, Ontario
K1A 0A6

MAR 27 1996

Requ-UCM-MDE

0-1025-1
2-4059-1

Re: BIOTECHNOLOGY AND THE CANADIAN ENVIRONMENTAL PROTECTION ACT

Dear Mr. Marchi:

I am writing to you regarding your government's proposal for regulating biotechnology which is contained in the December 1995 government response to the June 1995 report of the House of Commons Standing Committee on Environment and Sustainable Development.

We are deeply concerned that your government's proposal would significantly weaken the existing regulatory framework for biotechnology established under the Canadian Environmental Protection Act (CEPA). The proposal also runs counter to the intent of the House of Commons Standing Committee on Environment and Sustainable Development's June 1995 report entitled "It's About Our Health". It has the potential of endangering the health, safety and environment of Canadians, by weakening the provisions of the existing CEPA as they apply to biotechnology. We urge you to reject this proposal.

We ask that the government establish a new biotechnology part under CEPA which is consistent with the Standing Committee's recommendations. A new CEPA biotechnology part should:

- apply to all products of biotechnology which may enter the environment, including those which the government currently proposes to regulate under other Acts, such as the Seeds Act, the Pest Control Products Act, and the Fertilizers Act.
- establish requirements for the assessment of biotechnology products in terms of their:

.../2

JUDY DARCY

GERALDINE McGUIRE

National President/Présidente nationale National Secretary/Treasurer/Secrétaire-trésorière nationale

CLAUDE GÉNÉREUX, BERNICE KIRK, GLEN MAKAHONUK, TOM O'LEARY, PATRICK (Sid) RYAN
General Vice-Presidents/Vice-président(e)s généraux/ales

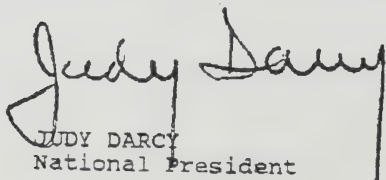


- 2 -

- potential immediate or long-term, direct or indirect effects on human life and health, the environment, and biodiversity, including cumulative impacts; potential effectiveness of the products for their intended purposes; and
- the availability of alternative means of achieving products' purposes which may present lower potential for harm to the environment and human health;
- provide for public participation in decision-making regarding biotechnology including:
 - public notice of major decisions regarding biotechnology products;
 - public notice of proposed field tests of biotechnology products;
 - opportunities to appeal government decisions regarding biotechnology products, including the approval of field tests; and
- provide for the establishment of a database of environmental releases of products of biotechnology in Canada.

In closing, I hope that you will act on the recommendations of the Standing Committee. The alternative will certainly lead to a weakening of the minimum safety net provided by the current Act.

Sincerely,



JUDY DARCY
National President

:lyl/opeiu 491

cc: G. McGuire; C. Lambert

Dept. Insp

Catholic Rural Life Ministry Co-ordinator

Paul J. Brassard

RECEIVED
MINISTER OF
THE ENVIRONMENT

75 Spruce Road Regina, Sask. S4N 0A1 Phone: (306) 945-8784 Fax: (306) 945-0510

Wednesday, March 20, 1996

Rec'd-DCU-DOE

MAR 27 1996

Regu-UCM-MDE

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MAR 20 1996 JLS

ENVIRONMENT CANADA
OTTAWA, ONTARIOThe Hon. Sergio Marchi
Minister of the Environment
Ottawa, Ontario K1A 0A6

Fax: 1-819-953-3457

Hon. Minister

0-1025 -/
0-1165-30/5157

039073

The Catholic Rural Life Ministry would like to bring to your attention the government's proposals for the regulation of biotechnology contained in its December 1995 response (Environment Protection Legislation Designed for the Future) to the June 1995 report of the House of Commons Standing Committee on Environment and Sustainable Development. (It's About Our Health)

We are deeply concerned that the government's proposal would significantly weaken the provisions of the existing Act as they apply to biotechnology. The minimum standards for notification and assessment of toxicity for all products of biotechnology currently provided for by CEPA would be eliminated.

This proposal is inconsistent with the intent of the Standing Committee's recommendations regarding the regulation of biotechnology under CEPA, and could endanger the health, safety and environment of Canadians. IT MUST BE REJECTED.

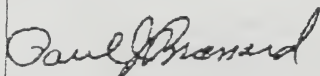
The Catholic Rural Life Ministry would suggest that the new CEPA biotechnology part should:

- apply to all products of biotechnology which may enter the environment, including those which the government currently proposes to regulate under other Acts, such as the *Seeds Act*, the *Pest Control Products Act*, and the *Fertilizers Act*,
- establish requirements for the assessment of biotechnology products in terms of their:

- potential immediate or long-term, direct or indirect effects on human life and health, the environment and biodiversity, including cumulative impacts; potential effectiveness of the products for their intended purposes; and
- the availability of alternative means of achieving products purposes which may present lower potential for harm to the environment and human health;
- provide for public participation in decision-making regarding biotechnology including:
 - public notice of major decisions regarding biotechnology products;
 - public notice of proposed field tests of biotechnology products;
 - opportunities to appeal government decisions regarding biotechnology products, including the approval of field tests; and
 - enhanced access to information regarding products of biotechnology;
- establish a full-cost recovery, user-pay system for approvals of biotechnology products; and
- provide for the establishment of a database of environment releases of products of biotechnology in Canada.

The Catholic Rural Life Ministry believes that there is an urgent need to develop mechanisms and processes for public engagement in the formation of social policy to govern the development, application and regulation of biotechnology.

Sincerely



Paul J. Brassard
Catholic Rural Life Ministry Coordinator

pc: Federal Minister of Agriculture
Provincial Minister of Agriculture
Provincial Minister of the Environment

C.A.W. Windsor Regional Environment Council

CAW



TCA

Ken Cloutier
Chairperson

Ken Bondy
Vice-Chairperson

Don Auld
Treasurer

Charles Baker
Recording Secretary

Rec'd-DOU-DOE

MAR 15 1996

Rec'd-UCM-MDE

0-1025-1

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The Honorable Sergio Marchi
Minister of the Environment
10 Wellington
Hull, Quebec
K1A 0H3
Fax (819) 953-3457

When you receive this letter you will likely be getting ready to make your final decisions on the changes to the "Canadian Environment Protection Act". The fact that you are under a great deal of pressure from all sides of the debate, at a time when you are just starting to familiarize yourself in your new portfolio, is not lost on myself. But, it is critical that you bring the same compassion for the safety of the people of Canada that you demonstrated in your last portfolio to the Ministry of the Environment.

Your Ministry is in the position of safeguarding the long term health of both the natural environment and the health of our communities and people. The Federal Government and especially your Ministry, must take the lead in ensuring minimum standards of the highest order, and resist decentralization of environmental policy. This must not be left to the regional whims of Provincial Governments.

When pollutants are allowed into our environment they accumulate in animals, lakes, and even people. A good example of this, is the Beluga Whale of the St. Lawrence. These magnificent mammals are experiencing reproduction difficulties, because of the cumulative buildup of toxins in their bodies via our lakes. These substances, such as PCBs, DDT, Mirex, Mercury, Lead, PAHs, and other substances such as toluene must be banned or at least quickly phased out. If the great whales are being affected, then the Canadian people are also being affected.

Another area that must be addressed is that of empowerment. As citizens of Canada we have a birth right to protect the health of our families and our natural surroundings. To do this we must be guaranteed basic rights to protect our environment. We must have access to information on pollutants being released into the environment whether they be air borne, liquid waste, or land filled. This information must be made easily accessible to everyone. Canadians must have the right to sue those who damage the environment, and be protected from employers who break the law, without fear of reprisal, or financial hardship.

The new and constantly expanding industry of Biotechnology has dangerous potential. With the general lack of information as well as a need for apparent secrecy being required, the Ministry of the Environment, and the Ministry of Health, should be setting guidelines. If some of these new designer products are released into the environment the result could be disastrous. Here there is a great need for a new section to be added to CEPA, which must be administered by the Ministry of Health and the Ministry of the Environment.

The "Standing Committee on the Environment and Sustainable Development" completed and released a report in June of 1995. In the report the Committee made 141 recommendations which if acted upon would go a long way in enhancing the CEPA. This report cost Canadian tax payers millions of dollars and must be acted upon at once.

Mr. Minister, we Canadians paid for this report. Please use it. What you do today will affect many generations of Canadians. You must take the leadership role and stand your ground for all Canadians. A watered down CEPA is nothing less than a sellout of millions of Canadians, whether they know it or not.

In Solidarity

Charles H Bake



Recording Secretary

CAW Windsor Regional Environment Council

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MINISTER OF
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MAR 25 1996

Regu-UCM-MDE

11 Cambridge Street
Guelph, Ontario N1H 2T8

21 March 1996

The Honourable Sergio Marchi
Minister of the Environment
Terrasses de la Chaudière
10 Wellington St.
Hull, P.Q. K1A 0H3

0-1025-1
0-1165-36/
5157

Dear Mr. Marchi:

I am very disappointed with the government's response to the report by the Parliamentary Standing Committee on Environment and Sustainable Development on reforming the Canadian Environmental Protection Act (CEPA). It appears to me that "CEPA Review: The Government Response, Environmental Protection Legislation Designed for the Future" adequately addressed only a few of the Standing Committee's 141 recommendations. The vast majority of the recommendations of the Standing Committee were either ignored or rejected by the government's proposals.

I strongly believe that the Canadian Environmental Protection Act must set strict environmental standards. The use and release of chemicals that persist in the environment and build up in wildlife and humans must be banned or phased out. For example, some of these chemicals are endocrine disruptors, and evidence is accumulating which indicates that they contribute to a variety of health problems including tumour promotion, immune deficiencies and reproductive failures.

The Canadian public needs an Environmental Bill of Rights which should be incorporated in the Canadian Environmental Protection Act. It must give citizens the right to participate in decisions affecting the environment. It should include the right to intervene when the environment is being harmed, including effective rights to sue polluters.

I am especially worried about the government's response as it applies to biotechnology. This is an issue of serious concern to most Canadians (according to your own polls). I, along with several other women, met with our M.P., Brenda Chamberlain, to inform her of our position regarding recombinant bovine growth hormone. We also presented her with a petition signed by hundreds in Guelph who share our concerns.

The government proposals would significantly weaken the existing Act in the area of biotechnology. This direction is inconsistent with the Standing Committee's recommendations. I along with many others want the biotechnology section of CEPA to apply to all products of biotechnology which may enter the environment, including those which the government currently proposes to regulate under other Acts, such as the *Seeds Act*, the *Pest Control Products Act*, and the *Fertilizers Act*.

The biotechnology section of CEPA must establish requirements for the assessment of biotechnology products in terms of their:

- (1) potential immediate or long-term, direct or indirect effects on human life and health, the environment, and biodiversity, including cumulative impacts;
- (2) potential effectiveness of the products for their intended purposes; and
- (3) the availability of alternative means of achieving the product's purposes which may present lower potential for harm to the environment and human health.

The biotechnology section of CEPA must also provide for public participation in decision-making including:

- (1) public notice of major decisions regarding biotechnology products;
- (2) public notice of proposed field tests of biotechnology products;
- (3) opportunities to appeal government decisions regarding biotechnology products, including the approval of field tests; and
- (4) enhanced access to information regarding products of biotechnology.

In addition, the biotechnology section of CEPA must establish a full-cost recovery, user-pay system for approvals of biotechnology products as well as provide for the establishment of a database of environmental releases of products of biotechnology in Canada.

I hope you will take the action necessary to include these recommendation in the revised CEPA in order to establish an effective Environmental Protection Act for all Canadians. I look forward to your reply.

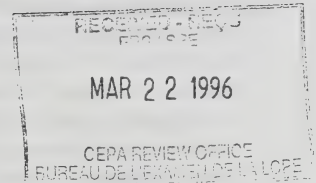
Sincerely,

Cynthia Folzer

cc: Brenda Chamberlain, M.P.
Charles Caccia, M.P.

DATE: March 22, 1996

TO: The CEPA Office
Environmental Protection Service
Environment Canada
Ottawa, ON K1A 0H3
Fax: 819 997 0449



FROM: Alice Chambers
10 Burrows Road
Pinawa, MB R0E 1L0
Fax 204 753 2610, e-mail: chambera@wtp1.eastman.freenet.mb.ca

RE: **RESPONSE TO**
Environmental Protection Legislation Designed for the Future
- A Renewed CEPA A Proposal

Perhaps a few general comments would be in order before going through parts of the document. Those people given the responsibility for drafting the "Renewed CEPA" must keep in mind that this legislation is the **Canadian Environmental Protection Act**, not the sustainable development act, nor the industry protection act nor the international public relations act! These other goals may be incidental to a strong Canadian Environmental Protection Act but they must not be the driving force behind its provisions. In reading through "A Proposal", there are many references to needs other than environmental protection and reasons given why certain courses of action should not be taken because of possible spin-offs in other areas. The information available through the internet also leads me to believe that the choices will not always put the environment first.

Canadians have shown over and over again that they want strong federal leadership in environmental protection - this is referred to a number of times in *It's About Our Health: Towards Pollution Prevention*. No provincial government that I am aware of has a mandate to seek a lessening of federal powers in areas affecting the environment, certainly the government of Manitoba doesn't. I strongly recommend that the renewed CEPA take advantage, in its wording, of every possible scrap of federal powers available. We need strong, common standards of environmental protection across the country so that we don't have differing levels of acceptability for health and protection of, not just the environment, but also of individual Canadians. All Canadians should have the right to a clean environment, including clean drinking water, clean air and well-functioning natural ecosystems. Is it possible to include such a statement in the Preamble to the Act? Page 4, line 8, of *A Proposal*, includes such a statement: "All Canadians have a right to a clean and safe environment, in order to protect their health.". Perhaps this sentence and the next: "In this area of shared responsibility all Canadian governments have the duty to protect that right" could be included.

There is nothing at present that I am aware of that fosters accountability on the part of Provincial governments with regard to enforcement of legislation or monitoring of licences. Is

it possible to include, within CEPA, an appeal mechanism to provide some level of provincial accountability? For example, a mill near me has an emissions licence which has not been monitored for over 12 years - it is highly likely that it is out of compliance with the licence but the province will not ask for monitoring data or collect monitoring data. There should be an avenue of appeal. As far as industry and competition, it does not create a level playing field and does not result in environmental protection. Assurances of accountability will be increasingly important if harmonization and equivalencies are going to be fostered. If MB is going to have an equivalent legislation to the PPER but is then going to allow a mill to discharge raw effluent into the river, how will the environment and the public be protected? A recent case, where MB Environment would allow a discharge and Environment Canada wouldn't, clearly reflects the dangers of harmonization/equivalent legislation as I believe that MB has committed to enforcing the minimum levels of the PPER.

I sincerely hope that federal departments will retain monitoring and enforcement abilities wherever possible. If possible, building in an accountability provision, a guarantee of a standard minimum level of environmental protection and avenues for appeal would help ensure the protection of the environment and human health, no matter where one lived. I don't believe that large areas of overlap have been demonstrated and surely, efficiency and effectiveness are enacted through basic common standards not by differences or by having all provinces try to duplicate areas where federal expertise remains and is far superior to what smaller provinces such as mine could or would put in place.

I was more than a little disturbed to read, near the bottom of Page 2 of *A Proposal*: "The sustainable development approach provides a means of managing economic development and human growth without destroying the life support system of our planet". This is the worst "approach" to sustainable development that I have yet to read, and we have some pretty strange ones in MB! Why was a statement, which implies degradation, as long as it's not destruction, of the environment (rather than the commonly held sustain or enhance) included in a document supposedly about legislation to protect our environment? A statement like this is not a confidence builder! Again, on page 4, CEPA is to contribute to the jobs and growth agenda! I am not anti-jobs - that would be ridiculous, but sustainable development does not imply ever increasing growth on a finite planet. It is really disappointing to have such an economic focus in a CEPA document. I did not get the same impression when reading the report of the Standing Committee and I am surprised at the tone, given that it comes from Environment Canada not Industry Canada!

At a recent sustainable forestry conference in Edmonton, a PAPRICAN rep was discussing the need for change, the international pressures for closed loop industries, the need for research so that recovery processes were more efficient. It would be most unfortunate if the new CEPA did not assist industry in achieving the changes that global competition have prompted or if the premises for the protection of jobs were out of line with today's and tomorrow's demands. Giving in to the pressures of some sectors who are reluctant to adjust will not be in their long term best interests. Jobs will be lost through international and perhaps even national pressures. If Pulp and Paper companies can lose jobs through international pressures, so can others. Strict environmental standards and legislation will foster innovation and long term efficiency and

stability. If the PPER had been enforced earlier or older plants grandfathered for a certain period of time, the industry would have improved its environmental and economic performance years ago. This is an area that **clearly** demonstrates the need for legislation - the goal of having companies voluntarily upgrade never occurred.

Under **Guiding Principles**, page 7, I agree that pollution prevention should be a major focus but shouldn't the primary principle still be environmental protection (integrity of ecosystems, biological diversity, human health) - some activities can result in environmental degradation without necessarily discharging pollutants. I also strongly support the precautionary principle and producer/user responsibility (in that order as something must be produced in order to be used) although I would prefer producer/user stewardship. This is a little different from responsibility and would be more attuned to environmental protection and a life-cycle approach, which is missing.

While other incentives and agreements might be possible on a limited scale, they do not provide assurances of compliance nor do they result in level playing fields across the country. The **Administration** section, on page 7, is all about partnerships and reduction of federal influence in environmental management in Canada, not about administration of a strong CEPA. I strongly agree with including representation from Aboriginal Peoples on the National Advisory Committee and I truly hope that ways will be found to make that participation effective. There is nothing in the document about the operations of this new Committee - how will it operate? Again, will the priorities in CEPA be set by environmental/health needs or by business? Again, I have great concerns about the administrative agreements, equivalency agreements which are discussed on page 18. If there is no demonstrated environmental benefit to these agreements, or if there are chances of lesser degrees of environmental protection, then the agreements should not be promoted.

Under **Public Participation**, page 8, does increased awareness necessarily result in "expanded public rights"? I don't believe so. An informed public would be able to make wiser decisions and perhaps pressure for more rights but they wouldn't have new rights. Creating a registry of environmental information is a good idea and taking advantage of electronic capabilities is needed. I really do not know how effective public participation can be fostered but public education is badly needed and must be accomplished. At the moment, a tiny percentage of the public is involved in environmental protection processes. Better use of the weather channel for environmental information is one suggestion - various Acts could be highlighted over time, current actions/proposals could be outlined, and information regarding public participation could be given. Very few people will have access to the Canada Gazette and not everyone has a computer or is on the Internet. Even being on the Internet does not necessarily mean choosing to review the latest news from government departments. Every opportunity must be used to ensure that people know that they can be involved and have a duty to be somewhat knowledgeable. Some schools will certainly use electronic means to allow students to broaden their education to include surfing government documents.

Ecosystem Science and National Norms, page 8 - what new information and data inventories are expected to result from the renewed CEPA, other than the NPRI? If provinces don't have

records of pollutant releases, the registry may be misleading. The statement inferring that more information and guidelines "would lead to more effective and efficient decision-making and management" doesn't necessarily follow. Accumulating better information about ecosystems, their functions and interconnections is needed and can be used but the political will to change management and decisions because of increased scientific knowledge is obligatory for change to occur. Just as presumptuous is the assumption of intergovernmental cooperation. There wasn't evidence of intergovernmental cooperation when the CFS was persuaded to stay out of the recent public hearings for Louisiana-Pacific, even though it was a forestry proposal, MB was a proponent and could not contribute an independent view of the proposal, the CFS rep who sat on the TAC had rather strong criticisms re the sustainability of the wood supply, and there are transboundary effects with wood being brought from SK and effects on the already isolated Riding Mountain National Park.

Enforcement will not necessarily be more "cost-effective and efficient" if officials have to spend great amounts of time negotiating and drawing up different agreements with each company they are regulating. How will this promote a level playing field for industry or for monitoring? I do agree that other means than lengthy and expensive court proceedings can be utilized in some circumstances but there must still be the court option and public knowledge of the infractions and penalties.

Pollution Prevention would not mean just "mandatory pollution prevention plans for toxic substances", it would mean plans for eliminating the use and production of toxic substances wherever possible. The use of a toxic substance would be predicated upon showing that no non-toxic substance was available and that research was ongoing to find a non-toxic replacement. The principle of the use of least toxic substances should be included. An information clearing house for promoting pollution prevention (the Recycling Council of Manitoba Waste Exchange, which has folded, was a good example of an end of pipe method of pollution prevention). Certainly national listings and exchanges of information about potential pollutants and their management would be a useful idea. There are many sound reasons for promoting pollution prevention and the renewed CEPA should be very strong in this area.

As stated in *A Proposal*, page 13, pollution prevention has meant that some countries are already "reaping the economic benefits of clean, competitive, innovative industries with superior products receiving premium prices in global markets". To the definition of pollution prevention on page 14, I would include - and the avoidance of the generation and use of toxic substances.

To the statement regarding Canada's international obligations to biodiversity should be added reference to national commitments to the *Canadian Biodiversity Strategy*.

Biotechnology products which could be released into the environment must be evaluated in the same manner, using the same methods, criteria, and standards. Public review must be encouraged. The introduction of exotics through large scale genetic manipulations should be carefully regulated, researched and reviewed. Since we don't even understand the interconnections between/among natural organisms, how is it that it is so easy to introduce

unknowns? This will take a great deal of cooperation between federal and, in some cases, provincial governments to track the distribution and use of biotechnological products.

Controlling Pollution and Wastes - I agree with national fuel standards for Canada and prohibitions of export of fuels and fuel additives that are not acceptable by Canadian Standards. There should be enforceable national emissions standards for air pollutants, with standard terms in descriptions and to include all types of emissions. Research into long term exposures to small quantities of pollutants is needed, including cumulative effects research and modelling for pesticides, VOCs, organo-chlorines, particulates, etc. In my view, the export and import of wastes, whether hazardous or non-hazardous should only happen in extraordinary circumstances and then under a permit/licence situation. This would place a focus on reduction, reuse, recovery, recycling and would promote these technologies/industries in Canada. If a business does not wish to steward its wastes, then it shouldn't produce them. This same idea applies to municipalities, governments, and individuals.

Disposal of wastes at sea fits into the same category - only if it is ecologically sound and no other avenue of disposal exists. If restrictions are made in these areas, it will foster recovery of usable substances in "wastes". As long as it is cheap and easy to dispose of "wastes", stewardship will not be promoted. Much of what is considered to be wastes could be used in different ways or recovered. Innovative mechanisms will only occur as a result of pressures to deal differently with what has been called "wastes". Our vast areas, both land and water, have worked against developing waste management technologies which other countries have been forced to develop because of shrinking resources and sites. I agree with total cost recovery for processing where permits are granted and a national database for ocean disposal. Will this database also include those municipalities/businesses which dispose of their wastes near shore? The 10-day objection period is far too short.

Toxic Substances - I can agree with the idea of banning, sunseting, or severely restricting substances as per the OECD countries or provinces if based on independent scientific testing - not company produced results. One only has to look at the mess over company produced testings re nicotine or some of the pesticide testing to know that testing must be independent of the proponent. Payment for testing is the responsibility of the proponent. The onus of proof of non-toxicity is on the proponent. I don't understand the "partnerships" or the "independence in setting plans for virtual elimination"? Would government not set enforceable guidelines? I do not think partnerships is the right term - one doesn't normally regulate one's partners. I agree strongly with 9.13, page 72, which would require the assessment of impurities, contaminants and by-products. For pesticides, the cumulative effects of the inerts and carriers along with the active ingredients need to be assessed. In view of the limited data for long term testing and cumulative effects testing of many toxic substances, great care must be taken in the licencing of toxic products. Alternatives should be used wherever possible.

Government Operations, Federal Lands and Aboriginal Lands - government operations and activities on federal lands should exemplify the use of best practices, best technology. With the recent land clearing activities on reserve lands in Alberta, the need was demonstrated for closer attention to environmental protection on Aboriginal Lands. This will involve considerable consultation and perhaps administrative agreements which could be reviewed at

intervals. If airspace above reserves or federal lands are included as either Aboriginal or federal

lands, how would the effects of pollutants released at the edge of such lands be assessed?

Science and the Precautionary Principle - the definition on page 15 should be amended to include "or irreversible damage to human or ecological health, lack of" There is no doubt that science is an integral part of decision making in CEPA - there really is no other acceptable basis for environmental decision making. The precautionary principle has wide acceptance in decisions where there are many unknowns - biological systems, both human and non-human, are still largely fraught with unknowns.

Economic Responsibility - will the "benefit-cost approach and flexible economic decision-making" take all values into consideration and will they necessarily result in improved environmental protection? If the response is no, then I suggest you drop these suggestions.

Under **Reporting** on page 21, the recommendation is for a "further review by Parliament every seven (7) years". In view of the fact that there is rapid change occurring in environmental industries, that several studies are supposed to take place (mercury pollution, Bill of Rights, criteria for equivalency agreements, etc.) and that a number of new ideas will be incorporated into the renewed CEPA, a review 5 years should take place every five years.

Environmental Aspects of Emergencies - I agree with the recommendations 6.13 and 6.14 on page 49. Emergency preparedness guidelines, codes of practice, and management must be standard procedures for business and industry. Employee training and awareness and availability of emergency plans, MSDS sheets, etc. are major components of emergency preparedness and should be made compulsory.

In conclusion, Canadians have made it abundantly clear that they expect environmental leadership to come from the federal government. Standards, regulations, monitoring and enforcement, research are all part of what we expect. Nothing less is expected. A renewed CEPA must ensure that Canadian expectations are respected. I do not wish further powers over the environment to be given to either industry or to provincial/territorial governments. I do believe in the concept of ecologically sustainable development and I believe that this type of development will foster innovative, effective and efficient industry and ensure the long term health of both Canadians and their environment so that we will be the "good ancestor".

Thank you for the opportunity to comment - I hope that the renewed CEPA will result in greater environmental protection, not less.

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Sandie Chillman Sandie
Chillman

Address:

RR #1 Middleton
BOS 1 PO

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd - Document

MAR 25 1996

Recu - UCM - MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

SHIAN CHIHMAN

Address:

RR3 MIDDLETON

NOVA SCOTIA.

CITIZENS' CLEARINGHOUSE ON WASTE MANAGEMENT

R.R. #2

CAMERON, ONTARIO, CANADA K0M 1G0

Phone: (705) 887-1553

Fax: (705) 887-4401

Rec'd-DCU-DOE

March 6, 1996

MAR 11 1996

0-1025-1

Requ-UCM-MDE

Hon. Sergio Marchi, Minister of the Environment
Fax: 819-953-3457

138606

Rt. Hon. Jean Chretien, Prime Minister
Fax: 613-941-6900

Dear Elected Officials,

Our organization is concerned about the proposed reforms to the Canadian Environmental Protection Act. It is vitally important that the Canadian federal government continue to take a strong leadership role in environmental protection by setting strong environmental standards. Of special interest to the members of our organization are the following key points in this legislation:

1. the use and release of persistent and bioaccumulative chemicals should be banned or phased out.

2. advances in biotechnology are leading to new products which threaten human health, safety and the environment; CEPA needs a new section to be administered by Health Canada and Environment Canada to deal with the regulation of these products.

3. new provisions must be enacted to require all sectors of society to prevent, rather than just control, the use and generation of pollutants.

4. a federal Environmental Bill of Rights is needed so that citizens have the right to intervene when the environment is being harmed and the right to sue polluters who break the law.

5. there should be comprehensive public access to information on all toxic releases to the environment [including substances sent off-site for recycling or incineration] so that citizens can know who is releasing which pollutants and where they are being released.

Please provide us with your response to this urgent request to strengthen CEPA. Thank you.

Sincerely,

Barbara Wallace, Co-director

Barbara Wallace



recycled paper

CITIZENS FOR RENEWABLE ENERGY



RECEIVED
MINISTER OF
THE ENVIRONMENT

MAR 22 2 56 PM '96

Ziggy Kleinau
Co-Ordinator

R.R. #4 Lion's Head
Ontario N0H 1W0

Phone/Fax: (519) 795-7725

Rec'd-DCU-DOE
MAR 27 1996
Regu-UCM-MOE

To: Hon. Sergio Marchi, Minister of the Environment,
House of Commons, Ottawa

FAX #: 319 - 953 - 3457

0-1025-1
0-1165-36/S157

0 PAGE(S) TO FOLLOW

March 22, 1996

039072

COMMENTS: Dear Minister,

on behalf of the almost 200 members of 'CITIZENS FOR RENEWABLE ENERGY (CFRE), a member group of the Ontario Environment Network, I am contacting you to express our grave concerns with the response of the government to the recommended improvements to the Canadian Environmental Protection Act (June 1995 Report, Standing Committee on Environment and Sustainable Development: 'IT'S ABOUT OUR HEALTH *Towards Pollution Prevention'.

The watering down and changes put forward essentially make the new CEPA less efficient and harder to enforce.

We ask you to ensure that :

The Government takes a leadership role in environmental protection based on the PRECAUTIONARY PRINCIPLE , asking producers to prove beyond doubt that no harm will arise from use of their product.

- 2) the use and release of chemicals that persist in the environment and build up in the wildlife and human system should be banned or speedily phased out,
- 3) The Canadian public should have a right to know who is releasing toxic pollutants into the environment, including substances sent off-sites for incineration,
- 4) a comprehensive Canadian Environmental Bill of Rights is enacted as soon as at all possible.

We also endorse the recommendations by the Biotechnology Caucus of the Canadian Environmental Network (CEN).

Please respond to our concerns!

Thank you, sincerely,

Ziggy Kleinau
TOTAL P.01

Date: 3/23/96 2:34:58 PM
From: Tara Lynne Clapp
Subject: cite? and CEPA review comment

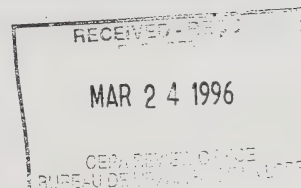
Dear CEPA Folk -

I have a two-part comment - the first part is a quick question. I would like to cite Issue Elaboration Paper #10 on Public Participation in a paper I am working on. I couldn't really tell how I should refer to the author (Environment Canada?) or the exact date of publication - 1995? Please let me know how you would like the citation done.

Secondly - I would strongly support relaxed requirements for standing to enable private citizens to bring public-interest environmental actions. While (as a Canadian) I would consider public enforcement of public regulations to be a valuable principle, in the current context it appears to be unlikely that Canada will be able to support its current level of public enforcement activities. I do have a concern about which citizens might have the capacity to bring such suits, but since they are envisioned to be in support of existing principles and regulations, this is less of a concern. I would hope that intervenor support or litigant assistance would be available under more traditional tests of standing.

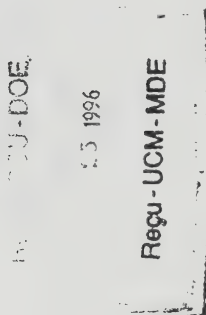
Thanks -

Tara Clapp
5 Chinook Drive, Cochrane, Alberta T0L 0W2
or
1357 Edgecliffe Drive #1, Los Angeles CA 90026
(213) 669-3310
tlclapp@rcf.usc.edu



DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Russell Clark (Russell Clark)

Address: 2456 Brooklyn St. #3 Aylesford N.S.

DEAR HONOURABLE SERGIO MARCHI

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I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Amelia C. Clarke *Amelia C. Clarke*

Address: RR # 2 Oyster Pond, Jeddore

Nova Scotia, Canada

BOJ IWO

Thank you for your time. I'd appreciate a response.



Clean North

736A Queen St. E.
Sault Ste. Marie, ON
P6A 2A9

Tel (705) 945-1573 Fax (705) 945-0595
cleannor@web.apc.org

7 March 1996

Rec'd-DCU-DOE

138602

The Honourable Sergio Marchi
Minister of the Environment
Terrasses de la Chaudière
10 Wellington St.
Hull, PQ K1A 0H3

MAR 11 1996

Regu-UCM-MDE

By fax: 819-953-3457

Dear Mr. Marchi:

We are writing to express our grave concerns about the proposed weakening of the Canadian Environmental Protection Act in several areas.

We believe that it is a fundamental responsibility of government to protect the rights of its citizens. Indeed, Thomas Jefferson wrote that securing our inalienable human rights is the only reason governments exist. Where citizens' rights are being violated, as is happening in the increasing contamination of our food and our bodies with persistent toxic chemicals, we believe that governments must intervene. When governments refuse to do so, they are abdicating this responsibility, violating our trust, and sacrificing their credibility to govern.

Canada's federal government must take the lead and demonstrate that it is prepared to protect basic human rights and stop the violation of our bodies by those who contaminate us. The use of toxic chemicals that persist in the environment, and their release into the environment, must be banned. Our bodies cannot deal with these chemicals. Our children should not have to.

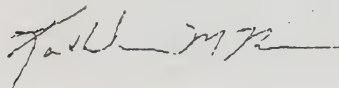
We are particularly concerned with the proliferation of the products of biotechnology in the Canadian environment, and in our food supply. Sault Ste. Marie residents have demonstrated their concern over genetically engineered food products by ending the formerly common practice of buying milk in the United States. As a border community, we are keenly aware of the difference in regulatory regimes on either side of the border, and we have rejected unlabelled dairy products. Some of us have gone so far as to declare that if rBGH is approved for use in Canada, we intend to cease consuming dairy products entirely.

We have followed the biotechnology debate with great interest, and are alarmed at the apparent transfer of regulatory authority for these products from your ministry to Agriculture Canada. It is our observation that this transfer will result in the same sort of conflict of interest that was faced by Atomic Energy of Canada before the transfer of regulatory authority to the Atomic Energy Control Board. Agriculture Canada has promoted research on genetically engineered crop products, has financed this research, and has itself carried out some of the research. We believe that Agriculture Canada has a large stake in seeing products of biotechnology brought successfully to market, and as

such Agriculture Canada is not the appropriate regulator of this technology. The protection of the environment, of human health, and of human safety, must be the priorities in the eyes of any regulator, not the material success of a technology.

We had been hopeful when the Canadian Environmental Protection Act was under review, that revisions would strengthen the Act in key areas. We are greatly dismayed that the proposed revisions would weaken the Act in its regulatory function over the products of biotechnology. These revisions must not be allowed to go forward. The revised CEPA must include strong protections of our rights to our health and to healthy families and confidence in our food supply. Health Canada and Environment Canada must bear regulatory responsibility for any technology that could affect our health or the health of the environment. Our confidence in our government requires it.

Sincerely,



Kathleen M. Brosemer
Chair

cc: The Rt. Honourable Jean Chretien

Clean North is a grassroots voluntary environment group with 350 members and over 200 active volunteers. Our mission is "to promote environmental protection through reduction, reuse, and recycling of residential and industrial waste in Sault Ste. Marie and the Algoma District."



THE CLEAN WATER COALITION

759 Eramosa Road, Guelph, Ontario N1E 5Z1

Ph:822-0712 Fax: 822-9273

Mar 21, 1996

Sergio Marchi
Minister of the Environment
10, Wellington St.
Hull, Quebec
K1A 0H3

RE: It's still about our Health!

Dear Mr. Marchi:

The Clean Water Coalition has submitted and participated with our endorsement of the Parliamentary Standing Committee on Environment and Sustainable Development submission of the report "It's about our Health!". We are dismayed to learn that, of the 141 recommendations of the standing committee, only a few were adequately addressed. The Federal proposals to reform CEPA fail to adequately strengthen the Act in the areas of pollution prevention, regulation of toxic substances, access to information and environmental rights.

We in Ontario are looking to the Federal Government for protection and guidance to ensure a safe environment. We need to have strong Federal legislation in which to do so. This appears not to be the case. The Federal government is downloading the responsibility and control for the environment to the Province while our leaders in Ontario are busily shifting it to local municipalities. This dangerous approach will allow a few local politicians to make these decisions based on little or no expert advice. We ask that our Federal government not add to the existing sentence of loss of the environment we are experiencing at the hands of the Progressive Conservative government.

We suggest that your ministry return the whole CEPA report back for public re-evaluation so we can strengthen the watered down version that now exists. CEPA needs to be a more powerful tool for the much needed Federal legislation so that we as Canadian citizens can proceed with our local struggle in the protection and enhancement of a healthy environment.

New provisions must be enacted to require all sectors of society to prevent the use and generation of pollutants rather than to control them. The Canadian public needs an Environmental Bill of Rights, which includes the right to intervene when the environment is being harmed and the right to sue polluters who break the law. We have the right to know who is releasing which pollutants including substances sent off-site for recycling or incineration as well as other toxic releases affecting our health. We require much stronger Federal leadership in preventing further destruction of the environment.

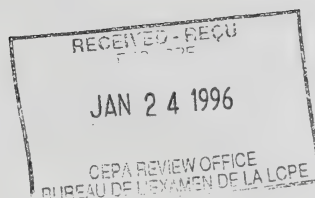
Yours truly,

Lynda Walters

Lynda Walters
per Clean Water Coalition

CC. R. Honourable Jean Chretien

Linda Cliff
112 Morrow St.
Dundas Ont.
Pesticide Action Group
Response to Renewed C.E.P.A.



C.E.P.A. Office
Environment Canada
15th Floor, Place Vincent Massey
Hull, Quebec
K1A 0H3

JAN 22 1996.

Dear C.E.P.A. Response Team;

Thank you for sending our group a copy of "A renewed C.E.P.A." I have finished reading the book and must admit that a broad range of environmental safety nets seem to be encouraged and these are a big step in opening the door for positive changes in the way all people treat the pollution of earth and the ensuing health effects.

The introduction of this document clearly states "All Canadians have the right to a clean and safe environment in order to protect their health" When I question both The Ministry of Environment and The Ministry of Health, the term "acceptable risk" is constantly used. Yet neither government office has a clear definition of what this term means. It appears that many chemicals have acceptable risk factors and when this term is used a double standard appears. It is our belief that vulnerability to potentially allergenic or poisonous chemical elements can vary greatly with age, state of health and genetic make-up. All environmental and health standards should protect the most sensitive of our society. The term "Acceptable Risk" should not exist.

All Canadians are to be empowered to make the market work for the environment, this is a statement which will take legislation to be effective.

Phosphorus and nitrogen from lawn fertilizers are invading many watersheds today. You can't see these nutrients, you can see all the weedless green lawns, with an increased prosperity people expect a manicured estate. The private landowner often believes that good environmental practises apply to everyone else and not him.

In the use of monitoring video cameras used at night in the city of Hamilton to catch polluters releasing black soot it became clear that polluters will wait until dark to hide their crime. This instance clearly shows many large companies still look at the watersheds, the air and the soil of the earth as unlimited commodities that will never interlink with their personal lives.

The public has a growing distrust of all government, in many cases people feel the government gives the appearance

of participation without letting people have an influencing voice. This is reflected in the C.E.P.A. document as people fear the cleaning up of pollution in watersheds, the replacing of hormone disrupting chemicals and the saving of the ozone layer will be countered by rising costs. This fear is strongly re-enforced by the large manufacturing companies. Why would a major chemical company..(I'll use my favorite Dow Chemicals) want any changes...They make the pesticides that cause different human reactions...such as asthma and cancer and then they sell you the drugs to cure these conditions...They win, the consumer buys the product, becomes ill and pays an average of \$150.00 per month for drugs to treat the condition known as asthma.

With cars it is the fossil fuel debate. There are hydrogen cars, I saw the television show on the Volvo in Sweden that ran effectively on water products. This alternative fuel source is not given as an option to the consumer.

There is an environmentally friendly cleaning product on the market made from orange peel rinds but the cost of the product is three times that of a chemical cleaner.

There are alternative roofing products to asphalt shingles but the cost is four times that of asphalt shingles.

These alternatives are too costly for the average Canadian citizen. Perhaps attempting to subsidize the cost of much needed change would encourage the citizens of this country to not only use these new products but it would also downplay the fears of costing too much to change.

C.E.P.A. appears to open the door for change, but the average Canadian citizen needs not only encouragement but financial help in meeting the objectives of C.E.P.A.

Making stronger and more effective policies is a noble start in controlling an out of control situation but does nothing to ensure a society that they can afford to participate in changing by using affordable alternatives.

Sincerely;

Linda Cliff

Linda Cliff
Dundas Pesticide Action Group.

DEAR HONOURABLE SERGIO MARCHI

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I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Martin Clavier

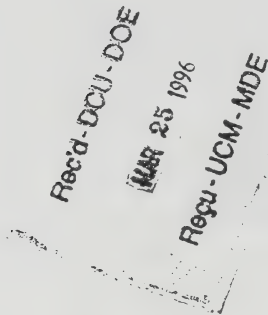
Address:

RR-1 Wilmet N/S BOP 1W0

(902) 825-6515

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Joan Coldwell JOAN COLDWELL

Address: 855 Gaspe Road Rte 20.

Rte #3, Waterville

W BOP 1x0

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: _____

(John Coleman)

Address: _____

Box 106 Laurencetown,

N.S. B0S1M0

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd-DCU-DOE

MAR 23 1996

REC'D-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Virginia Coleman

Address: Box 106 Lawrenceton,

N.S. Buxton

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Justin Colville

Address: 2000 Middleton Ave

POB #1

RECEIVED
MINISTER OF
THE ENVIRONMENT
Common Frontiers

MAR 21 11 48 AM '96

Rec'd-DCU-DOE

MAR 2 1996

Regu-UCM-MDE

39287

0-1025-31

0-1030-25/M15

March 21, 1996.

The Honourable Sergio Marchi,
Minister of the Environment,
Terrasses de la Chaudiere,
10 Wellington St., Hull, PQ,
K1A 0H3

Dear Minister Marchi,

Common Frontiers is a working group on international trade issues that has actively worked over the last six years to address the implications of the expansion of Free Trade Agreements in the Americas. An important part of our work involved collaborating with counterparts in Mexico around the negotiation and implementation of the NAFTA.

The Canada government claimed during those negotiations and subsequently to be interested in improving Canadian environmental regulation. There have been a number of disappointments in the United States and Mexico with regards to downgraded environmental regulation since the NAFTA was signed. We urge you to act counter to this trend and to respond positively to the excellent June 1995 report of the House of Commons Standing Committee on Environment and Sustainable Development (It's About Our Health!).

In particular we think that:

the federal government should take a strong leadership role in environmental protection by setting strong environmental standards;

the use and release of chemicals that persist in the environment and build-up in wildlife and humans should be banned or phased-out, since neither humans nor the environment can tolerate these substances;

the Canadian public needs an environmental Bill of Rights, which includes the right to intervene when the environment is being harmed and the right to sue polluters that break the law;

the Canadian public should also have the right to know who is releasing which pollutants into the environment through

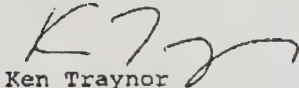
comprehensive public access to information that includes all toxic releases to the environment, including substances sent off-site for recycling or incineration;

the protection of human health, safety and the environment should be the priority of the government in the regulation of biotechnology and a new section should be added to CEPA, to be administered by Health Canada and Environment Canada, which applies to all biotechnology products which may enter the environment; and,

new provisions must be enacted to require all sectors of society to prevent the use and generation of pollutants rather than controlling them.

We hope that this government will respond positively to the proposals put forward by the committee and will take a leadership position in the Americas with regards to promoting effective environmental policy appropriate to the challenges we face at this time.

Yours sincerely,



Ken Traynor
for the Steering Committee
Common Frontiers

**Concerned Citizens
of Ashfield
and Area**RECEIVED
MINISTER OF
THE ENVIRONMENT

MAR 20 4 25 PM '96

R.R. #3, Lucknow,
Ontario N0G 2H0
Phone/Fax: (519) 529-7434

Rec'd-DCU-DOE

MAR 22 1996

0-1025-1

March 20, 1996

Regu-UCM-MDE

38924

The Honourable Sergio Marchi, Minister of the Environment
Terrasses de la Chaudiere
10 Wellington Street
Hull, Quebec, K1A 0H3 (Fax 819- 953-3457)

Dear Mr. Marchi:

Re: PROPOSED REFORMS: CANADIAN ENVIRONMENTAL PROTECTION ACT (CEPA)

Our organization consists of several hundred concerned citizens in the immediate area of Huron County's Proposed Landfill Site A3 in the Township of Ashfield. Stage 2D of the County's Masterplan is just being completed.

We are very concerned that the proposed reforms to both the environmental assessment (EA) process and approvals process may be fundamentally flawed and contrary to the public interest and request that **FULL DETAILS** be provided to the public BEFORE any final decisions are made respecting these changes. We should have a meaningful opportunity to review and comment upon this unprecedented rollback. While the EA process could undoubtedly be improved and streamlined, it should **NOT** be substantially dismantled in relation to waste management undertakings because it is an important safeguard against undesirable significant adverse or irreversible environmental impacts in four key requirements that are not found in other provincial laws such as the Planning Act or the Environmental Protection Act, as follows:

- a) Broad Definition of "ENVIRONMENT"
- b) Consideration of ALTERNATIVES
- c) Justification and need rationale by the proponent
- d) Role of the Public (including potential hearings & intervenor funding)

We are requesting that you take the following actions:

- 1) Keep waste disposal approvals, including landfills and incinerators or energy from waste facilities, under full EA process. This means maintaining current requirements to address need for the facility, alternatives to the proposal, including the 3Rs and different types of proposal facilities, and different sites for the disposal facility.

2) Ensure that the opportunities for citizens to have full public hearings on waste disposals are maintained; (WE ARE NOW REQUESTING A HEARING ON THE PROPOSED A3 LANDFILL SITE).

3) Extend intervenor funding to ensure that the public have the opportunity to be serious participants in the hearing process; (WE ARE NOW REQUESTING INTERVENOR FUNDING ON THE PROPOSED A3 LANDFILL SITE).

4) ENSURE THAT THERE IS A FULL OPPORTUNITY FOR PUBLIC INPUT BEFORE THE PROVINCIAL GOVERNMENT MAKES ANY CHANGES IN THE APPROVALS PROCESS.

The federal and provincial governments should take a strong leadership role in environmental protection by setting strong environmental standards.

The use and release of chemicals that persist in the environment and build up in wildlife and humans should be banned or phased out, since neither humans nor the environment can tolerate these substances.

The Canadian public needs an Environmental Bill of Rights, which includes the right to intervene when the environment is being harmed and the right to sue polluters who break the law.

The Canadian public should also have the right to know who is releasing which pollutants into the environment through comprehensive public access to information that includes all toxic releases to the environment, including substances sent off-site for recycling or incineration or disposal.

The protection of human health, safety and the environment should be the priority of the governments in the regulation of biotechnology. A new section should be added to CEPA, to be administered by Health Canada and Environment Canada, which applies to all biotechnology products which may enter the environment.

New provisions must be enacted to require all sectors of society to prevent the use and generation of pollutants rather than to control them.

We endorse the joint submission to the federal government, "It's Still About Our Health" by the Canadian Environmental Law Association (CELA) and Canadian Environmental Network (CEN) etc.

Yours in a cleaner environment,


Aubrey Weir, President CCAA

Sub-Offices (Halifax)

Native Education
Counselling Unit (902) 494-8863

Hospital Interpreters
Liaison Program (902) 422-9120



Head Office (Truro)

Phone: (902) 895-6385
Fax: (902) 893-1520

The Confederacy of Mainland Micmacs

Member First Nations

Afton - Annapolis Valley - Bear River - Horton - Millbrook - Pictou Landing

MILLBROOK MULTI-PURPOSE CENTRE

840 Willow Street

Millbrook Micmac Native Community

P.O. Box 1590

Truro, Nova Scotia

B2N 5V3

138545

February 23, 1996

Rec'd-DCU-DOE

Our file # 2000-C-6

Sergio Marchi
The Honourable Minister of the Environment
House of Commons
Ottawa, Ontario
K1A 0A6

MAR 7 1996

Rec'd-UCM-MDE

0-1165-36/c8-5

Attention: Mr. Marchi

Dear Minister,

**Re: The Canadian Council of Ministers of the Environment (CCME) environmental
"harmonization" agreement**

I am employed by the Confederacy of Mainland Micmacs (a Native Tribal Council in Nova Scotia) to undertake an environmental pilot project assessing the devolution of environmental assessments to the First Nations level. A central aspect to my role is understanding legislation regarding environmental concerns and the First Nations. Therefore, I must express my concerns regarding the Canadian Council of Ministers of the Environment (CCME) environmental "harmonization" agreement. The following is a brief outline of these concerns.

The gap in the current Canadian Environmental Assessment Act respecting Indian lands and environmental assessments suggests an increasing role to the First Nations level to perform assessments currently being undertaken by federal agencies including the Department of Indian Affairs. Of concern for this devolution is the apparent lack of resources provided for training and assessment performance, assuming this devolution is acceptable to First Nations. It is my feeling that time, capacity building, and information sessions with federal representatives is of paramount importance in helping First Nations to prepare for an environmental devolution. With this in mind, I am suggesting to you that a reduced federal presence on the environment will serve to exacerbate an already rapidly changing and complicated situation.

Second, the agreement, as I understand it, fails to address the issue of the role of First Nations governments and aboriginal people in the management of Canada's environment. This is a highly significant issue with the First Nations people, particularly when considering the changes proposed to legislation and the Indian Lands and Funding Regulations which will **require** more involvement at the First Nations level on environmental matters.

My final and ultimate point is to request that you **not** endorse, sign or ratify the proposed EMFA at the May 1998 CCME meeting.

Respectfully yours,

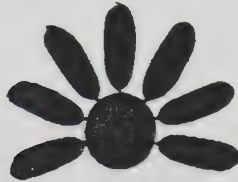
A handwritten signature in cursive script, reading "M. Clare O'Connor".

M. Clare O'Connor, M.U.R.P
Environmental Project Officer
Confederacy of Mainland Micmacs

Sub-Offices (Halifax)

Native Education
Counselling Unit (902) 494-8863

Hospital Interpreters
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Millbrook Micmac Native Community

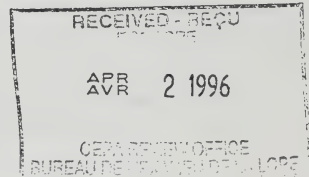
P.O. Box 1590

Truro, Nova Scotia

B2N 5V3

April 1, 1996

Valerie Assinewe
CEPA office
Environmental Protection
Environment Canada
15th Floor, Place Vincent Massey
Hull, Quebec
K1A 0H3



Dear Ms. Assinewe,

Re: CEPA Review Input

I have read the excerpts from the proposed CEPA changes included in the bulletin sent to our office by Environment Canada. The following comments are focused on suggestions for representation with respect to committee participation. Given the options listed in the bulletin, the preferred choice from our perspective would be a representative per province and territory. However, the lack of funding to support this approach poses a degree of difficulty. Most First Nation communities/organizations lack funding to properly address issues for which their input is both fundamental and necessary to the process. Presently, it would appear to be of even greater significance for Aboriginal People and/or their representatives to discuss the Canadian Environmental Protection Act given the current gap in the Canadian Environmental Assessment Act. Ideally, it would be best to have a round table discussion(s) to generate ideas on such an important topic.


A second recommendation which we think would best represent our views, is a national committee made up of Assembly of First Nations regional affiliates. It is of significance to us that our views are presented directly from either our province or region and not from a national perspective. The concerns that we have in Nova Scotia or Atlantic Canada are of obvious difference to our more western counterparts.

In unity there is strength and in strength there is power, justice and equality for all.

Participation in the process is the main thrust of this letter. We think initial participation is necessary prior to commenting further on the proposed changes to the Canadian Environmental Protection Act.

If you have any questions or comments regarding our position please contact me at any time at (902) 895-2038 / 2039.

Sincerely,

A handwritten signature in dark ink, appearing to read "M. Clare O'Connor". The signature is fluid and cursive, with the first name "M." followed by "Clare" and "O'Connor" in a single line.

M. Clare O'Connor, M.U.R.P.
Environmental Project Officer

Sub-Offices (Halifax)

Native Education
Counselling Unit (902) 494-8863

Hospital Interpreters
Liaison Program (902) 422-9120



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Millbrook Micmac Native Community

P.O. Box 1590

Truro, Nova Scotia

B2N 5V3

0-1165-36/C8-5

February 26, 1996

Rec'd - DCU - DOE

Our file 2000-C-6

Sergio Marchi

The Honourable Minister of the Environment

MAR 7 1996

House of Commons

Ottawa, Ontario

K1A 0A6

Regu - UCM - MDE

38544

Dear Mr. Sergio Marchi;

I am writing you to express concern over the proposed harmonization agreements proposed by the Canadian Council of the Ministers of the Environment. To put my concern in context, I must outline my role in the area of the Environment.

I currently represent the Confederacy of Mainland Micmacs (a Tribal Council in Nova Scotia), at the Regional Sub-Committee on environmental issues setup under MOU agreements between Health Canada, Environment Canada, and Department of Indian Affairs. CMM was the first native organization to be represented at this level in Canada. I lobbied for a Regional Committee at the Tribal Council level to provide input to the MOU Committee. This has been setup under DIAND's Environmental Partnerships Program. This committee (the Environmental Partnerships Liaison Committee), provides input to the MOU Committee as a result of this structure.

I am a professional Engineer involved in Capital, Maintenance and Environmental issues at CMM. CMM is currently involved in a Pilot Project to address problems with the current gap in legislation on Environmental Assessments with respect to Reserve lands. The Pilot is intended to setup structures which will work now and in the future when legislation will require assessments to be done by First Nations.

I am also the Nova Scotia and Newfoundland Representative of the Assembly of First Nations National Environmental Committee. Though this is a recent posting (January 1996), I think I can speak to this issue in this capacity as well.

In unity there is strength and in strength there is power, justice and equality for all.

And finally, as a non-native employed by a native organization and being given the opportunity to represent native concerns at these levels, I think my comments should be considered seriously.

As I understand the proposed CCME harmonization agreement, there are significant issues which must be addressed. These primarily revolve around a clear definition of roles and responsibilities and appropriate resourcing to fulfill these roles. The agreement doesn't begin to address First Nation's roles, responsibilities, and concerns with respect to the environment. This is inconsistent with impending legislation such as the Indian lands and Funding regulations under CEAA and current DIAND policy to devolve environmental activities to First Nation peoples.

I must ask that you not sign the agreement, as it proposed.

Yours truly,



Arnold J. G. Hughes, P. Eng.

AJH/gmh

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

EDM-M-WCN-nofact
12 1991
M.M.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Kathy Conner

Address:

RR2 Kingston, N
BeP/Ko

DEAR HONOURABLE SERGIO MARCHI

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IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Irish Connell

Address: RR #2 Kingston, NS

BOP RO



Conservation Council

of New Brunswick

People for Environmental Responsibility



Conseil de la conservation

du Nouveau-Brunswick

140 rue St. John Street,
Fredericton, NB,
E3B 4A9
Tel. (506) 458-8747
Fax 458-1047

L'environnement, ça nous regarde!

Rec'd-DCU-DOE

The Honourable Sergio Marchi
Minister of the Environment
FAX: 819-953-3457

MAR 26 1996

March 22, 1996

Reçu-UCM-MDE

139003

0-1025-1
0-1165-36
/SIS

Dear Minister,

We were saddened and disappointed by the Federal Government's response to the report "It's About Our Health! Towards Pollution Prevention", in which only a handful of the 141 recommendations suggested were adequately addressed.

"It's About Our Health! Towards Pollution Prevention" was written in response to extensive cross-Canada public hearings to improve CEPA. As such, it represents a wide range of interests from the public and interest groups across the country. Despite this, most of the recommendations have not been addressed.

Instead the government's reform proposals seem only to reflect the powerful influence of polluting industries who would have environmental protection in Canada weakened. The proposals fail to adequately strengthen the Act in the prevention of pollution, regulation of toxic substances, access to information and environmental rights. In the area of biotechnology and international air pollution, the proposals actually threaten to weaken the law that the review process set out in the first place to strengthen.

The following points must be seriously considered in any review of the present CEPA.

- 1) The federal government must take a leadership role in setting strong environmental standards.
- 2) Our responsibilities to future generations must be addressed by phasing out the use of chemicals which persist in the environment.
- 3) The public must have access to information concerning release of pollutants and must be given the power to defend the law to protect health and environment.
- 4) Biotechnology must be regulated in terms of human health, safety and the environment.
- 5) We must move towards preventing pollution, not just controlling it.



Sincerely,

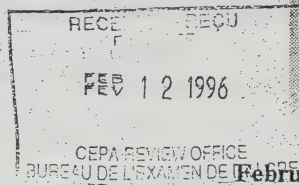
Martha McClure

Martha McClure
for the Conservation Council of New Brunswick

cc: The Rt. Honourable Jean Chrétien
cc: New Brunswick MP's



The Minister of the Environment
CEPA Office, 15th Floor
Place Vincent Massey,
351 St. Joseph Boulevard,
Hull, Quebec.
K1A 0H3



CORCAN

February 05, 1996

Dear Mr. Minister:

I am most pleased to respond to the former Minister's invitation to Mr. Peter Milliken, MP. Kingston and the Islands, dated January 10, 1996, regarding modifications to CEPA.

As a Director of the Composting Council of Canada and Corcan Manager of Compost Operations in Kingston, I am delighted that the Standing Committee on Environment and Sustainable Development has recommended that CEPA be expanded to include the Management of Non Hazardous Solid Waste. The Federal Authority to establish a new policy and controls for the Export and Import of Municipal Solid Wastes between Canada and the United States is long overdue and most welcome.

Corcan, as a Special Operating Agency, of the Correctional Service of Canada, has been advocating the development of centralized compost facilities in Canada and specifically in Ontario, and has been impeded by the lack of control of trans-boundary shipments of valuable organic waste for disposal in the U.S.A. The implementation of Provincial Programs of 3 R's legislation, through recycling MSW waste, cannot be fully achieved without Federal control through CEPA.

The Composting Council of Canada is the one agency which promotes composting as a growth industry, in Canada, and a 60-70% diversion of organic feedstock from landfill. Municipal Governments, across Canada, have concluded that centralized composting facilities are required to achieve the 50% diversion from landfill targets at both the Provincial and Federal Governments.

Most Municipal Agencies have been hesitant to proceed with private capital ventures to establish compost facilities while the Federal Government was allowing commercial waste haulers to dispose of MSW waste through exporting to the U.S.A landfill sites. The continuation of this practice clearly not only undermines the diversion programs, but also jeopardizes the creation of new jobs and services for Canadians at new facilities.





CORCAN

I strongly urge you to endorse sections 8.18 and 8.19 of the CEPA Review Document so that the Federal and Provincial jurisdictions' diversion programs may be maximized.

After incorporating non hazardous solid waste, as a part of CEPA. I encourage your Ministry to develop a master plan with the MOE&E, Ontario, whereby the exporting of MSW may be considered, only as a last resort. The precondition of implementing integrated waste management programs consisting of recyclables and composting operations have proven that landfill or incineration quantities can be reduced to 15% of the MSW stream.

I would be pleased to assist your Ministry in this regard as Corcan has evolved to a leadership role for the Federal Government in Composting Operations.

Yours truly,

W.R. "Wink" Wilson

Manager, Corcan Compost Operations



DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

REC'D - SCU - DOE

MAR 25 1996

REC'D - UCM - MDE



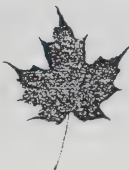
I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Jani Couillard

Address: Box 871 GREENWOOD
NS

THE
COUNCIL
OF CANADIANS



LE
CONSEIL
DES CANADIENS

Rec'd-DCU-DOE

139020

The Honorable Sergio Marchi
Minister of the Environment
House of Commons
Ottawa, Ontario
K1A 0A6

MAR 26 1996

Requ-UCM-MDE

0-1025-1
0-1165-36/S157

March 12, 1996

Dear Mr. Marchi,

I am writing on behalf of the 50,000 members of the Council of Canadians. We are concerned about the federal government's proposals to reform the Canadian Environmental Protection Act (CEPA). We feel that the government must take a strong leadership role in environmental protection and that this must be done through clear and effective environmental standards.

We are extremely concerned by the deterioration of the environment and by your government's proposals, contained in the "CEPA Review: The Government Response". We agree with the Canadian Environmental Law Association that Canada needs an Environmental Bill of Rights, including citizens' rights to sue polluters and that new provisions must be enacted to prevent the use and generation of pollutants rather than just to control them.

The current proposals do not strengthen the Act in the areas of pollution prevention, regulation of toxins, access to information nor environmental rights. In fact, in certain areas the proposals actually threaten to weaken the laws that they presumably set out to strengthen. Specifically, we are concerned about the government's position on biotechnology. We feel extremely strongly that the protection of human health, safety and the environment should be the priority of the government in the regulation of biotechnology. No products of biotechnology should be allowed to enter Canada without meeting stringent criteria. The onus must be on the manufacturers to prove that not only do their products meet all environmental, health and safety standards but that they also have a demonstrated usefulness to the Canadian public. Unless manufacturers can demonstrate the value of their products to Canadian consumers, they should be refused entry into Canada.

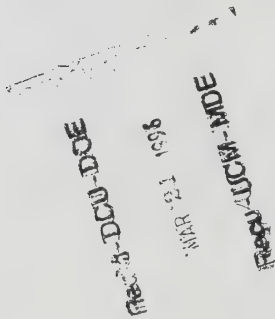
Canadians need an Environmental Protection Act that we can be proud of and that serve the needs of average Canadians and not corporations or other powerful lobbies. We look forward to hearing from you soon on this matter.

Sincerely,

Maude Barlow
Volunteer National Chairperson

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Jackie Cross

Address: Middleton NS

Box 100



**CROP PROTECTION
INSTITUTE**
**INSTITUT POUR LA
PROTECTION DES CULTURES**

21 Four Seasons Place, Suite 627, Etobicoke, Ontario, Canada M9H 6J8

The Honourable Sergio Marchi
Minister of Environment
Room 101-S, Centre Block
House of Commons
Ottawa, Ontario
K1A 0A6

March 20, 1996

139086

Rec'd-DCU-DOE
MAR 27 1996
Regu-UCM-MDE

0-1025-1
0-1165-36/5157

RE: CEPA Review: The Government Response

Dear Minister Marchi,

The Crop Protection Institute appreciates the opportunity to comment on the Government Response to the CEPA Review. Member companies of the Crop Protection Institute are in the forefront of agricultural biotechnology with recent developments of both herbicide and insect resistant crops. These developments clearly present new options for pest control which support the concept of sustainable agricultural practices.

If Canada is to be a world leader in the area of agricultural biotechnology we must commit to the principle of ensuring that biotechnology regulation be responsive and effective, while maintaining the highest standards in protection of the health of humans and the environment. We feel, for the most part, that the Government Response supports such a principle and offer the following comments :

- We support a renewed CEPA continuing to work within the existing Federal Framework where products of biotechnology that fall under existing Acts of Parliament be regulated under such Acts. Agricultural products derived through biotechnology would, therefore, continue to be covered by *Seeds, Feeds, Fertilizers, Plant Protection, Health of Animals* and *Food and Drug Acts*.
- As mentioned in section 7.4, CEPA should act as a "safety net" for products which are clearly not covered by existing Acts and legislation. We do not support new legislation under CEPA for products which fall or potentially fall under other Acts as this will raise the possibility of an additional or duplicative layer of regulation. If required,



regulations in existing Acts can be modified to establish notification and assessment criteria.

- Under section 7.4 we have concerns with the necessity that regulations be promulgated before notification and assessment be taken under another relevant Act. This approach will set the stage for delays and duplication. If it is clear that an Act covers a product, and published guidelines exist for notification and assessment under that Act, the product should be assessed under that Act.


In recent examples with plants with novel traits, adequate regulatory scrutiny did occur with guidelines under the Seeds Act and the Food and Drug Act. The necessity for promulgation of regulations, would have caused a significant delays in commercial development without a corresponding added value in the safety assessment. Such a situation would have resulted in Canada being years behind in biotechnology development rather than being one of the world's leaders.

- In general terms, we would like to emphasize that regulatory oversight through guidelines is the most effective way to administer regulatory requirements for biotechnology products. The technology and how we understand it, will evolve rapidly in the future. Using guidelines as the regulatory tool will best serve the flexibility required to deal with future notification and assessment needs. Entrenchment of regulatory requirements as regulations will create a system that cannot respond to the technology itself.

The current Federal Framework supports a stringent, well defined, predictable, efficient and defensible regulatory system for products of biotechnology. Canada's regulatory system has been developed in an open and consultative way and is recognized as a model internationally. Any deviation of this approach will call Canada's credibility into question and our leadership position will be compromised.

Our comments reflect the opinion of an industry poised for new and exciting developments in Canadian agriculture and trust that these comments will be considered in the development of a new CEPA.

Regards,

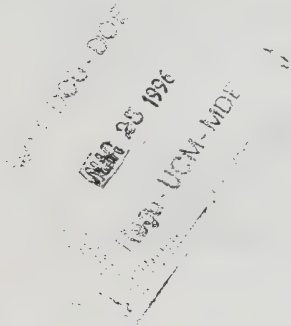


Conor Dobson
National Technical Committee
Biotech Subcommittee
Crop Protection Institute of Canada

copy: Honourable Ralph Goodale, Minister of Agriculture
Honourable John Manley, Minister of Industry

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

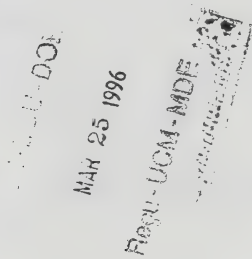
IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Jennifer Crouse (Jennifer Crouse)

Address: R.R. #2, Kingston Ns., B0P 1R0

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Francesca Crowther

Address: RR 1 Margaretsville
N.S. BOS/NO

Francesca Crowther



Dalhousie University

Faculty of Management
School for Resource and
Environmental Studies

Rec'd-DCU-DOE

March 12, 1996

The Honourable Sergio Marchi
Minister of the Environment
Terrasses de la Chaudière
10 Wellington St.
Hull, Québec
K1A 0H3

MAR 21 1996

Reçu-UCM-MDE

0-1025-1
138860

My name is Alison Clark and I am a graduate student in the Masters of Environmental Studies program at Dalhousie University in Halifax. I am writing to express my concern regarding the proposed reforms to the Canadian Environmental Protection Act. I fear that the Act may actually be weakened in the attempts to strengthen it, as a result of watered down revisions. I am afraid to agree with the suggestion that the federal government is succumbing to the wishes of industries, who seem to be basically demanding a right to pollute. Please correct me if I'm wrong, because although I know the federal government represents Canadians, actions such as these make me skeptical, and I shouldn't have to be so skeptical at such a young age.

There are several issues surrounding environmental protection in Canada that hit close to home for me. I'm not going to go on and on about them here, but I think the most relevant one to mention to you is the use and release of chemicals that persist in the environment and accumulate in wildlife and humans — these must be banned since it has been proven that we can't tolerate these substances (we meaning all species including humans). When a product comes on the market and is shown to have adverse effects on human health, it is immediately removed at the cost of the company who produced it. Their reputation suffers as do their sales - but usually only temporarily. (Cigarettes is obviously a huge exception to this, but that's a whole other issue - I do appreciate that there are exceptions, as unfortunate as they may be, but I don't think industrial pollutants warrant an exemption). These companies (whose defective/harmful products were made known to the public), continue to market products, and they correct their mistakes by ensuring better quality control. Same goes for you/us. Let's admit we were wrong by not stepping in sooner, get these chemicals out of circulation once and for all, suffer the temporary consequences and be done with it.

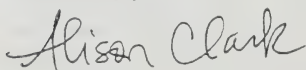
I'm only 26 years old and will be getting married in the fall. Although this makes me extremely happy, my thoughts stray every day by my country's future and my planet's future (let alone my own future). How could I possibly bring a child into a

world where they are saying, in 1996, that there may only be enough fresh water to drink to last us another 30 years? I just can't bear to inflict what I picture the future to be like on anyone, especially not a child of my own. That makes me pretty sad, and it makes my family pretty sad too (not to mention my fiancé), but it's not something I'm alone in. People my age are constantly struggling about these kinds of issues, grappling with how we can dramatically change things so the future doesn't seem so bleak. I guess I feel like we're facing some pretty hard times - a suffocating environment, a country divided, a flailing economy. It's so hard not to feel frustrated when you've been fortunate enough (as I have) to be put through university for six years and to be unable to put your education to use. Maybe if I write this letter and you read it, I'll have done that. Then I would feel like all that I have learned will be worth a little something. But I'm skeptical, and I usually have a hard time being convinced otherwise.

I hope I haven't strayed too far off topic here, but I just think that our Canadian government has to take a strong leadership role and set strong environmental standards. After all, you're representing the Canadian public, and that's what I am, Canadian public. If you set up a Standing Committee, you might as well follow the recommendations they offer you. According to what I have read, out of 141 recommendations, only a "handful" were addressed while the rest were rejected or ignored?? - I mean surely you don't put those committees together as part of a job-creation program, or just so it can be known that there was a "Parliamentary Standing Committee on Environment and Sustainable Development", to make people like me feel better...I'm hoping that wasn't the intention of this wasn't the point of all this. But I'm skeptical, and I'd like to see something happen that makes me re-evaluate my outlook.

I truly appreciate you giving up a bit of your time and attention to read this letter. I don't suppose this letter will actually reach Sergio Marchi, but if someone actually does read it through, I would love to hear any comments you might have. I don't mean to be skeptical, but unfortunately, it seems to be in my nature.

Sincerely yours,



Alison Clark
Graduate Student
Canadian

cc. The Rt. Honorable Jean ~~Chretien~~ Chretien, Prime Minister.

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Jacky Davis

JACKY DAVIS

Address:

976 Howe Ave

Greenwood.

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd-DCU-DOE

MAR 18 1996

Recu-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Teresa de Groot Teresa de Groot

Address: 4709 Hamilton Drive

Yellowknife, NWT

X1A 2E1

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd-ECU-DeL

MAR 25 1996

Regu-UCM-MDE

Regu-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Christine De Longy CHRISTINE DE LONGY

Address: RR2

Kingston N.S

BOPIRO

Dear Honourable Sergio Marchi:

I am a Canadian who wants to stop all toxic pollutants from entering our air, soil, and water.

The Liberal Party committed itself in its policy statements outlined in the 'Red Book' "to make pollution prevention a national goal and to strengthen the enforcement of federal pollution standards". The government response to the Standing Committee's Report on the CEPA Revisited falls far short of accomplishing this. Major disappointments include

the failure to:

- ▶ legislate the phase out of all toxic chemicals
- ▶ require industry to develop plans to avoid the use of toxic chemicals
- ▶ regulate biotechnology and legislate the mandatory labelling of it's products
- ▶ give citizens public participation and effective rights to sue polluters who break environmental laws
- ▶ implement strong measures to protect biodiversity

For real sustainable development to work, uncompromising commitment must be made through the CEPA to ensure that we protect our environment and the biodiversity of our planet.

*Chief Albert a Denup
RR2 Trenton, Site 6, Box 13, Box 100
Pictou Landing First Nation,*

Dear Honourable Sergio Marchi:

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For real sustainable development to work, uncompromising commitment must be made through the CEPA to ensure that we protect our environment and the biodiversity of our planet.

~~for~~
Wayne Denny
Pictou Herald, First Natl

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd DCU-DOE

MAR 22 1998

Rec'd UCM-DOE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

KATHLEEN DESLAURIERS

Address:

615 INDUSTRIEL #6

ST-LEON-SUR-RICHIEUX, QC

J3B 4S8

DEAR HONOURABLE SERGIO MARCHI

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I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Shada Dodge

Address:

R R 6

Kingston, NS B0P 1R0

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

REC'D - DCU - DOE
MAY 23 1991
EDM - UCM - MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Mack Dodge MACK DODGE

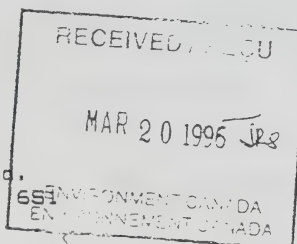
Address: 15 Gales Ave.

Widdferden

Dept. resp.

RECEIVED
MINISTER OF
THE ENVIRONMENTMAR 20 10:05 AM '96
Regu-UCM-MDEMAR 27 1996
Regu-UCM-MDE116-400 Kingston Rd.
Pickering, ON L1V 6S9

March 21, 1996



Hon. Sergio Marchi, Minister of the Environment
10 Wellington St.
Hull, PQ
K1A 0H3

Dear Mr. Marchi:

I have read that the Canadian Government is proposing, under CEPA Reforms, to change environmental protection laws to reduce their effectiveness in eliminating pollution. I am writing to raise my concerns about this backward step, and strongly request that you reject any attempt to reduce environmental controls.

I would like you to respond in writing to this letter and inform me about your rationale for these proposed changes. I have read that the changes are in response to intensive lobbying by major industries. Even if this is the case, what could their rationale possibly be? Most corporations already make large profits, so saving money in reducing pollution controls only makes their profit-taking seem more selfish and, in the face of mounting evidence showing that pollution in our air, water and food causes cancer and learning disabilities, downright obscene.

Are these proposed changes part of your Red book vision for Canada's future? I sincerely doubt it. I, like many Canadians, have taken many steps towards a "greener" future, both in my daily lifestyle and my efforts to educate others (which I do through Pickering Waste Reduction Committee). The changes your Government is considering will turn back the clock and undo the progress we have achieved over the past twenty years.

It is the role of your federal Government to take a strong leadership role in protecting the environment by setting strong national standards. PLEASE DON'T ABANDON YOUR LEADERSHIP! After all, protecting the "environment" really means, protecting the earth and all living things.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Dolawoord".

John Dolawoord

cc: Hon. Jean Chretien, Prime Minister of Canada

0-1025-1
0-1165-36/5157
139074



DuPont Canada

Arthur R. Sawchuk
Chairman
President
Chief Executive Officer

DuPont Canada Inc.
P.O. Box 2200, Streetsville
Mississauga, Ontario L5M 2H3
Telephone: (905) 821-5141
Facsimile: (905) 821-5651

1996 March 05

The Honourable Sergio Marchi
Minister of the Environment
House of Commons
Ottawa, Ontario
K1A 0H3

Rec'd-DCU-DOE

MAR 14 1996

Regu-UCM-MDE

0-1025-1
0-1165-39/50
138757

Dear Minister Marchi:

I am pleased to respond to the letter of 1996 January 16 from the Honourable Sheila Copps, which provided a copy of the Government Response of the Standing Committee on Environment and Sustainable Development and solicited comments.

DuPont Canada is an active member of the Canadian Chemical Producers' Association (CCPA) and has assisted in the development of that Association's detailed submissions at all stages through this review process. I wish, at this time, to reiterate my solid support for the CCPA's submission on the Government response.

There are a few elements I wish to emphasize to stress some of my personal convictions. Overall the Government response provides a balanced and sound approach in addressing the parliamentary committee report. It recognizes the importance of maintaining fundamental strengths, such as the toxic substances management policy and the risk-based assessment of toxicity, as currently present in Section 17. The concept of sustainable development is more strongly incorporated. The role of voluntary initiatives and economic instruments, as complements to good regulations in achieving environmental protection, is clearly recognized and supported.

.../2

Page 2

The Honourable Sergio Marchi

1996 March 05

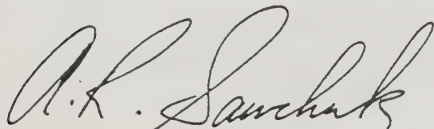
Allow me to also express a few concerns. This review clearly will result in a complete rewrite of the Act. It remains my contention that the present Act is functioning quite well. To require that a similar exercise occur, even in seven years time, could be extremely wasteful of resources. Such a major overhaul should be optional, with an incremental review being preferable. Cost recovery and "significant new use" provisions should not be considered for incorporation into CEPA until after the 1997 new substance notification provisions review.

The Government response represents the culmination of many months of deliberation and the consideration of diverse viewpoints. In order to bring this process to a timely and successful conclusion, it is strongly suggested that the government conduct any further consultations on a simple, bilateral basis.

The implications of such a review for the Chemical Industry can be far-reaching. It is essential that all intended changes be given a credible cost-benefit evaluation, as industry competitiveness remains a significant concern in the dynamic global marketplace.

Thanks once again for the opportunity to offer comments on this critical document.

Yours truly,

A handwritten signature in dark ink, appearing to read "A.R. Sawchuk". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

A.R. Sawchuk

ARS/nr

EAST COAST ENVIRONMENTAL LAW ASSOCIATION

Suite 911, 6080 Young St., Halifax, Nova Scotia B3K 5L2
Tel: 902-454-2534 / Fax: 902-455-3105

Halifax, March 12, 1996

The Honourable Sergio Marchi
Minister of the Environment
Terrasses de la Chaudière,
10 Wellington St.,
Hull, Qué.
K1A 0H3

Rec'd-DCU-DOE

MAR 26 1996

Requ-UCM-MDE

0-1025-1
0-1165-36/S157

138999

Re: "CEPA Review: The Government's Response - Environmental Protection Legislation Designed for the Future"

Following the work of the *Standing Committee on Environment and Sustainable Development* and its 141 recommendations calling for a total revamping of CEPA, Canadians expected a strategy demonstrating federal regulatory leadership. Instead, the federal government weakened its role in a number of key areas and failed to implement aggressive prevention and regulation of toxic chemicals (see Canadian Environmental Law Association, *It Is Still About Our Health: Commenting on the Government Proposal to Reform the Canadian Environmental Protection Act*, March 96).

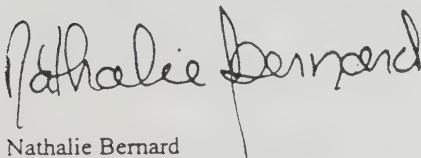
We believe that the federal government should take a strong leadership role in environmental protection by setting strong environmental standards preventing the use and generation of pollutants rather than controlling them. The government should commit to an Environment Bill of Rights which would include the right to intervene when the environment is being harmed and the right to sue polluters who break the law.

The government should ensure public access to information on toxic releases into the environment (including substances sent off-site for recycling or incineration). Canadians have a right to know who is releasing which pollutants into the environment!

In addition, the protection of human health, safety and the environment should be the priority of the government in the regulation of biotechnology. A new section should be added to CEPA, to be administered by Health Canada and Environment Canada, which would apply to all biotechnology products which may enter the environment.

We urge the federal government to commit to a strong CEPA and to protect both environmental and human health for the present and future generations of Canadians. Thank you for the attention, we trust, you will give to this matter.

Yours Truly,

A handwritten signature in black ink, reading "Nathalie Bernard". The signature is fluid and cursive, with the first name "Nathalie" and the last name "Bernard" clearly distinguishable.

Nathalie Bernard
Executive Director

Rec'd-DCU-DOE

MAR 13 1996

Regu-UCM-MDE

Anke Tuininga
Ecology North
4807 - 49th Street
Yellowknife, Northwest Territories
X1A 3T5

March 5, 1996

The Honourable Sergio Marchi
House of Commons
Ottawa, Ontario
K1A 0A6

0-1025-
38685
0-1125-36/515

The Honourable Sergio Marchi:

On behalf of Ecology North and as a citizen of Canada, I express deep concern about the fact that the House of Commons did not accept the report called "IT'S ABOUT OUR HEALTH, Towards Pollution Prevention" which was put together by the Standing Committee on Environment and Sustainable Development. This report was very substantial and included many recommendations that would give the "Canadian Environmental Protection Act", legislated by the Conservative Government, some real and totally essential 'teeth'!

The Liberal Party PROMISED, in word as well as in your written Red Book, that they would revisit and put some teeth into the Act. Obviously, this means that you and the Liberal Party were very aware that the Act didn't have much solid or actual Environmental Protection in its legislation. And now the Liberal Party, too, has chosen to ignore the excellent report of the Standing Committee on Environment and Sustainable Development and has drawn up a response that is even less substantial, and infact, is weaker than what the Conservatives put in the original Act.

The membership and board of Ecology North call upon your integrity and honesty as leaders within the Liberal Party to honour your commitment to put "teeth" into the Environment Protection Act. This means that you adopt and put into legislation the original Report of the Standing Committee on Environment and Sustainable Development as it was written. You kept reminding us, during your election campaign, that we had the responsibility to call you to keep your Red Book promises. This is what we are doing. Will you do your part AS YOU PROMISED?

For the Membership and Board
of Ecology North

Anke Tuininga

RECEIVED
MINISTER OF
THE ENVIRONMENT

MAR 22 8 15 AM '96

March 22, 1996

Rec'd-DCU-DOE

138955

MAR 25 1996

Reçu-UCM-MDE

TO: The Honourable Sergio Marchi
Minister of the Environment
Terrasses de la Chaudiere
10 Wellington St.
Hull, PQ K1A 0H3

Fax: 819 953 3457 (p.1 of 21, title page incl.)

0-1025-1-
0-1165-30/
5157

ON FEDERAL CORPORATE TAX POLICIES RELATIVE TO PROPOSED CHANGES
TO THE CANADIAN ENVIRONMENTAL PROTECTION ACT (CEPA).

FROM: Robert Wilde

Edmonton Friends of the North Environmental Society (EFONES)
201, 9740 - 82 Ave NW
Edmonton, AB T6E 1Y5
Ph/Fax: 403 433 6804

-1-

INTRODUCTION:

From the Report of the House of Commons Standing Committee on Environment and Sustainable Development, June 1995; P.44:

"There's an almost total abandonment of pollution control as an issue or as a focus of environmental policy. The discussion there is all on clean production technologies, on product life cycles, on prevention methods, so the CEPA type of act wouldn't even be necessary."

(William Rees, Professor at the School of Community and Regional Planning at the University of British Columbia, on his recent observations in several European countries)

The above sentiment comes very close to expressing my concerns about the character of the overall approach to CEPA now being contemplated by the present federal administration.

I am writing on behalf of Edmonton Friends of the North Environmental Society (EFONES). Members of EFONES have participated in a number of hearings, including court proceedings; some have conducted original scientific researches and submitted the data to appointed boards. Many of us feel that CEPA may end up restricting the scope of access and genuine participation available to the general populace. We also find it impossible to ignore current political pressures to devolve responsibilities to the provinces. For us, a CEPA that lacks the statutory force necessary for its de facto implementation is not just a bad dream; rather is it a logical consequence of certain political agendas now being discussed in the House of Commons.

Recent court decisions have not been favourable to individuals and organizations seeking recourse. *Friends of the Old Man Society v. Canada* is a case in point: "... the Supreme Court confirmed the right of the federal government to enact environmental measures as an adjunct to its specifically enumerated powers, including the fisheries and POGG powers". (Commons Report, p.4) At the same time, the highest court of the land also chose to restrict the ambit of then-existing fiduciary functions: "...that the federal government will not be permitted a plenary jurisdiction over environmental issues simply on the grounds that there is some element of national concern." (Ibid. p.4) Canadian citizens lost a means of legal recourse and the federal government, an entire level of social and political involvement. The case resulted in a significant curtailment of the powers of citizens (to invoke statutes to do with a general welfare) and of governments (to exercise their powers in defense of same). The appellant won the battle and lost the war. In the same instance, the federal administration of the day chose not to penalize the province (Alberta) for flouting the recommendations of a federal environmental assessment board.

-2-

Again, citizens were left with little or no legal recourse; and as a consequence of the refusal to enforce its regulations, the federal government lost credibility in areas proper to its jurisdiction. I do not expect your administration to do anything about it now; nor is this just indulging in an opportunity to state a grievance. Rather am I attempting to remind you of the political and social climate in which you are contemplating the various proposals before you.

The authors of the Committee Report noted (on p.39) that CEPA has an overarching policy goal - to contribute to sustainable development. Surely it comes as no surprise that industry favours conditions that sustain profits and contribute to the development of new markets. As pointed out by Professor Rees, product life cycles and process methods need not have anything to do with human health, environmental protection or pollution control - nor, from certain perspectives, does "sustainable development". Furthermore, I believe that if it is not the intent of policies/laws to achieve an alleged goal (like pollution control), it simply won't happen.

It's no easier to draft an effective law than it is to ensure that statutes match policies; and no policy can function without the appropriate tax regime(s). I will try to identify patterns attending current (corporate) tax policies and to determine how/if these be consistent with an intent to protect human health and the environment. The following are a number of referenced observations for your consideration:

PART I: Observations on Economic Trends in Canada and Alberta.

- A. Reference: STATSCAN - Cat no. 13-213 (see attachments)
Provincial Economic Accounts, Annual Estimates 1981-94
 [Note: GDP = Gross Domestic Product; \$ in millions;
 BT = Before Taxes, % increase - my calculation]

GDP, Income Based: Canada

	1981	1994	% Increase
Wages & Salaries:	197,910	412,980	108
Corp.profits (BT):	37,654	56,243	49
GDP @ market price:	355,994	748,606	110

GDP, Income Based: Alberta

Wages & Salaries:	22,438	39,859	78
Corp. profits (BT):	8,773	7,382	- 16
GDP @ market price:	51,777	82,218	59

OBSERVATION 1: *In Alberta, salaries, corporate profits and growth are lagging behind trends in the rest of Canada.*

-3-

GDP, Expenditure Based: Canada (G2S - goods & services)

	1981	1994	% Increase
Total personal Exp:	196,191	454,302	132
Personal Exp.(services):	86,705	234,870	171
Gov't Exp G&S:	68,792	151,289	120
Gov't Cap. investment:	9,447	17,169	82
Business Cap. investment:	76,672	119,186	55
Exports G&S Abroad	96,880	249,392	157
Provinces	98,499	154,961	57

GDP, Expenditure based: Alberta

Total personal Exp:	21,178	43,895	107
Personal Exp (Services):	9,623	22,524	134
Gov't Exp. G&S:	6,380	13,607	113
Gov't Cap. investment:	2,187	1,728	- 21
Business Cap. investment:	16,513	16,565	1
Exports G&S Abroad:	12,716	25,770	103
Provinces:	17,953	21,446	19

OBSERVATION 2: *Relative to the rest of Canada, neither recent provincial administrations nor the business community of Alberta is willing to invest in the people or the province.*

OBSERVATION 3: *With respect to Alberta and to a lesser extent the rest of Canada, the mainstay of the internal economy resides in the activities of the people, not the resource sectors.*

B. Reference: STATSCAN - Cat. no. 61-219 (see attachments)
Financial Statistics for Enterprises (1988-1994)

1. Per Cent Return on Equity and Profit Margin, p. 66-69

	1988	Equity 1989	1993	1994
Total All Industries:	10.6	8.9	3.1	6.5
(excluding investment)				
Petroleum/Nat.gas:	6.2	4.4	7.6	8.2
Other fuels:	5.4	7.4	16.3	16.3
(including synthetics)				
		Profit Margin		
Total All Industries:	7.6	6.8	4.5	5.9
(excluding investment)				
Petroleum/Nat.gas:	9.5	9.1	9.4	10.5
Other fuels:	16.8	11.2	13.7	15.5
(including synthetics)				

-4-

OBSERVATION 4: *Profit Margins and Returns on Equity for oil & gas and other fuels (Alberta's major resource sector) are substantially above national averages.*

2. Assets & Operating Revenue, Expenses and Profit, p 37 & 39 (millions of dollars)

Petroleum & Natural Gas

	1988	1989	1993	1994
Assets:				
Operating Revenue:	5,336	5,276	5,173	5,219
Operating Expenses:	2,783	2,709	3,267	2,630
Operating Profit:	2,314	2,404	2,819	2,222
	468	305	448	409

Other fuels (including synthetics)

	1988	1989	1993	1994
Assets:				
Operating Revenue:	118,786	121,571	131,271	145,785
Operating Expenses:	66,876	69,430	89,843	98,394
Operating Profit:	60,471	63,096	81,406	88,040
	6,405	6,333	8,437	10,354

OBSERVATION 5: *Present operating conditions for all segments of the petroleum sector are favourable to participating companies.*

PART II: Observations on Tax Corporate Remittances (see attachments)

A. Reference: Revenue Canada, Reference Table 52

Total Government Revenues, 1950-1994

Direct Taxes: persons vs corporations (\$ in millions)

% Direct Tax contribution by Corp: corp/(persons + corp)]

Year	Persons	Corporations	% Tax Contrib. Corp
1981	52,847	12,796	19.5
1982	58,943	11,755	16.6
1983	63,605	12,320	16.2
1984	68,223	14,984	18.0
1985	75,115	15,563	17.2
1986	85,176	14,573	14.6
1987	95,503	16,990	15.1
1988	107,178	17,586	14.1
1989	112,990	18,566	14.1
1990	132,024	16,834	11.3
1991	136,140	15,015	9.9
1992	139,441	14,517	9.4
1993	140,505	14,618	9.4
1994	145,269	17,056	10.5

OBSERVATION 6: *Tax contributions to general revenues by the corporate sector exhibit a pattern of consistent decline. Corporations now contribute about one half (by proportion) of what they did 15 years ago. 1951 was the last year corporate tax contributions exceeded those of the general populace.*

B. Reference: Globe & Mail Report on Business ("InfoGlobe") 1995
Tax Paid by Selected Companies (see attachment)
 [Note: Negative amounts indicate the value of a tax credit paid to filer for that tax year.]

Corporation	Tax Year	Pre-tax Profit(\$mil)	Income Tax Paid(\$thou)
Agra Industries	1993	2.86	0
Alberta Natural Gas	1990	39.6	- 222
Rovar	1991	1.8	0
Canadian Natural Resources Limited	1993	59.2	0
Fording Coal	1992	25.4	- 5,049
Imperial Oil	1991	142.9	- 15,699
Numac Oil & Gas	1992	4.5	- 54
Royal Bank	1992	63	- 65,000
Trans Mountain Pipeline	1992	25.6	- 940
Unocal Canada	1992	21.4	0

OBSERVATION 7: *The laws of the land permit corporations to systematically avoid paying direct taxes on profits earned while operating in Canada and, at the same time, to receive tax credits from general revenues. There are no indications the present tax policies are likely to suffer the slightest interruption.*

C. Reference: Alberta Treasury, Revenue Administration
Fiscal year ended March 31 (in 000's of \$)

Corporate Income Tax:

1983	565,727
1984	730,840
1987	321,483
1993	636,842
1994	854,000

Corporate Royalty Remittances:

Royalties	1983	1984	1987	1993	1994
Crude Oil	2,337.9	2,872.9	996.7	1,008.5	766.0
Natural Gas	1,876.4	1,694.1	1,097.2	1,069.3	1,410.0
Syn. Crude	362.3	303.8	12.0	64.9	66.0
Coal	14.0	10.9	7.1	16.0	14.0

-6-

OBSERVATION 8: *Royalty remittances to general revenues derived from the petroleum industry exhibit a pattern of net decline for the last 13 years (since 1983).*

1. Reference: Report of the National Task Force on Oil Sands Strategies; by the Alberta Chamber of Resources.
From Appendix F - Canada's Oil Sands Industry:
Yesterday, Today and Tomorrow

1. "...After five years of construction, the Syncrude project commenced producing in August 1978. (\$2.3 bil. plant 1973) It is worth noting that the Syncrude project is unique in terms of treatment of royalties for income tax purposes. Syncrude received a remission order from Revenue Canada in May 1976 ensuring the deductibility of royalties for tax purposes as well as allowing them the full resource allowance. This remission order expires on December 31, 2003." (See p.5)

2. "Return to Progress" - See P. 8

"During the early 1980's Syncrude decided to proceed with a \$1.5 billion capital investment program to improve operating efficiency and increase capacity. This investment program included a \$657 million Capacity Addition Program (CAP)."

"This (deregulation) was achieved under the Western Accord of March 31, 1985 which completely deregulated prices for crude oil in Canada, and provided for the phasing out of the taxes on the oil & gas industry that were introduced in the NEP."

Following the world price collapse in 1986: "...Alberta provided direct royalty relief to Suncor, arranged a backstop loan (in event a loan would be needed) to Syncrude to allow them to complete their CAP, and provided an interest-free loan of \$85 million to Syncrude to allow them to complete a basic engineering study for their proposed expansion."

"An additional hurdle was given to oil sands in 1987 with the introduction of federal income tax reforms. The general nature of the tax reform was to lower tax rates and lower the rate at which capital expenditures could be written off. As a consequence, even though the oil industry was in aggregate slightly better off, oil sands economics were impaired."

OBSERVATION 8: Royalty remittances to general revenues derived from the petroleum industry exhibit a pattern of net decline for the last 13 years (since 1983).

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-7-

OBSERVATION 9: *The oil sands industry has received assistance from general revenues in the form of loans and grants as well as well protection from tax and royalty regimes since its inception.*

E. Reference: Breakthrough Technologies,
(Alberta Research Council) (ARC), Nov.31, 1995
(see attachment.)

ARC operates the ADOE/ARC/CANMET/Industry (AACI) Research Program established to develop significantly improved and economically viable *in situ* recovery technologies for heavy oil and bitumen resources.

ARC and ADOE (Alberta Department of Energy) established the program in 1983 with only a few industry partners. In 1991, CANMET (Canada Centre for Mineral and Energy Technology) became a sponsor. Today, program contributors to the annual budget of over \$3 million include 13 international corporations.

Member Benefits: For an annual fee of \$75,000, member companies are entitled to licence-free use of technology developed under the program. Research results remain confidential for a period of 15 years, or until participants consent to release the findings into the public domain.

AACI Model: The AACI Program is the model for the industry-led Canadian Oil Sands Network for Research and Development (CONRAD). AACI will participate as the core of CONRAD's *in situ* portfolio.

OBSERVATION 10: *It is not explicitly stated that research results for oil sands projects are/will be subjected to third-party peer review. In addition, industry (CONRAD) may be empowered to withhold these results from federal/provincial regulators for at least 15 years even though funding derives, at least in part, from general revenues. In this circumstance, it is not likely that directly-affected communities would succeed in gaining access to such data.*

NOTE: The text ends here. You will find 13 page of attachments (A-0 to A-12) in this fax message of March 22. I will be sending PART III (on my observations relative to the Commons report), PART IV (on outstanding environmental issues), and a number of conclusions in the form of addenda. The hard copy of the entire submission will be mailed to your office within the next 30 days.

Sincerely,
Robert Wilde

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- \times Total M1 includes (partially) government securities (Treasury Department). Total money is created by Fed (not by government) at the point and bit (not by government)

total for 2000-01 of 11.7 million, and 12.6 million for 2001-02. Total for 2002-03 is 13.2 million. Total for 2003-04 is 13.7 million. Total for 2004-05 is 14.2 million. Total for 2005-06 is 14.7 million. Total for 2006-07 is 15.2 million. Total for 2007-08 is 15.7 million. Total for 2008-09 is 16.2 million. Total for 2009-10 is 16.7 million. Total for 2010-11 is 17.2 million. Total for 2011-12 is 17.7 million. Total for 2012-13 is 18.2 million. Total for 2013-14 is 18.7 million. Total for 2014-15 is 19.2 million. Total for 2015-16 is 19.7 million. Total for 2016-17 is 20.2 million. Total for 2017-18 is 20.7 million. Total for 2018-19 is 21.2 million. Total for 2019-20 is 21.7 million. Total for 2020-21 is 22.2 million. Total for 2021-22 is 22.7 million. Total for 2022-23 is 23.2 million. Total for 2023-24 is 23.7 million. Total for 2024-25 is 24.2 million. Total for 2025-26 is 24.7 million. Total for 2026-27 is 25.2 million. Total for 2027-28 is 25.7 million. Total for 2028-29 is 26.2 million. Total for 2029-30 is 26.7 million. Total for 2030-31 is 27.2 million. Total for 2031-32 is 27.7 million. Total for 2032-33 is 28.2 million. Total for 2033-34 is 28.7 million. Total for 2034-35 is 29.2 million. Total for 2035-36 is 29.7 million. Total for 2036-37 is 30.2 million. Total for 2037-38 is 30.7 million. Total for 2038-39 is 31.2 million. Total for 2039-40 is 31.7 million. Total for 2040-41 is 32.2 million. Total for 2041-42 is 32.7 million. Total for 2042-43 is 33.2 million. Total for 2043-44 is 33.7 million. Total for 2044-45 is 34.2 million. Total for 2045-46 is 34.7 million. Total for 2046-47 is 35.2 million. Total for 2047-48 is 35.7 million. Total for 2048-49 is 36.2 million. Total for 2049-50 is 36.7 million. Total for 2050-51 is 37.2 million. Total for 2051-52 is 37.7 million. Total for 2052-53 is 38.2 million. Total for 2053-54 is 38.7 million. Total for 2054-55 is 39.2 million. Total for 2055-56 is 39.7 million. Total for 2056-57 is 40.2 million. Total for 2057-58 is 40.7 million. Total for 2058-59 is 41.2 million. Total for 2059-60 is 41.7 million. Total for 2060-61 is 42.2 million. Total for 2061-62 is 42.7 million. Total for 2062-63 is 43.2 million. Total for 2063-64 is 43.7 million. Total for 2064-65 is 44.2 million. Total for 2065-66 is 44.7 million. Total for 2066-67 is 45.2 million. Total for 2067-68 is 45.7 million. Total for 2068-69 is 46.2 million. Total for 2069-70 is 46.7 million. Total for 2070-71 is 47.2 million. Total for 2071-72 is 47.7 million. Total for 2072-73 is 48.2 million. Total for 2073-74 is 48.7 million. Total for 2074-75 is 49.2 million. Total for 2075-76 is 49.7 million. Total for 2076-77 is 50.2 million. Total for 2077-78 is 50.7 million. Total for 2078-79 is 51.2 million. Total for 2079-80 is 51.7 million. Total for 2080-81 is 52.2 million. Total for 2081-82 is 52.7 million. Total for 2082-83 is 53.2 million. Total for 2083-84 is 53.7 million. Total for 2084-85 is 54.2 million. Total for 2085-86 is 54.7 million. Total for 2086-87 is 55.2 million. Total for 2087-88 is 55.7 million. Total for 2088-89 is 56.2 million. Total for 2089-90 is 56.7 million. Total for 2090-91 is 57.2 million. Total for 2091-92 is 57.7 million. Total for 2092-93 is 58.2 million. Total for 2093-94 is 58.7 million. Total for 2094-95 is 59.2 million. Total for 2095-96 is 59.7 million. Total for 2096-97 is 60.2 million. Total for 2097-98 is 60.7 million. Total for 2098-99 is 61.2 million. Total for 2099-00 is 61.7 million. Total for 2100-01 is 62.2 million. Total for 2101-02 is 62.7 million. Total for 2102-03 is 63.2 million. Total for 2103-04 is 63.7 million. Total for 2104-05 is 64.2 million. Total for 2105-06 is 64.7 million. Total for 2106-07 is 65.2 million. Total for 2107-08 is 65.7 million. Total for 2108-09 is 66.2 million. Total for 2109-10 is 66.7 million. Total for 2110-11 is 67.2 million. Total for 2111-12 is 67.7 million. Total for 2112-13 is 68.2 million. Total for 2113-14 is 68.7 million. Total for 2114-15 is 69.2 million. Total for 2115-16 is 69.7 million. Total for 2116-17 is 70.2 million. Total for 2117-18 is 70.7 million. Total for 2118-19 is 71.2 million. Total for 2119-20 is 71.7 million. Total for 2120-21 is 72.2 million. Total for 2121-22 is 72.7 million. Total for 2122-23 is 73.2 million. Total for 2123-24 is 73.7 million. Total for 2124-25 is 74.2 million. Total for 2125-26 is 74.7 million. Total for 2126-27 is 75.2 million. Total for 2127-28 is 75.7 million. Total for 2128-29 is 76.2 million. Total for 2129-30 is 76.7 million. Total for 2130-31 is 77.2 million. Total for 2131-32 is 77.7 million. Total for 2132-33 is 78.2 million. Total for 2133-34 is 78.7 million. Total for 2134-35 is 79.2 million. Total for 2135-36 is 79.7 million. Total for 2136-37 is 80.2 million. Total for 2137-38 is 80.7 million. Total for 2138-39 is 81.2 million. Total for 2139-40 is 81.7 million. 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Total for 2223-24 is 123.7 million. Total for 2224-25 is 124

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Other Additional Expenses and Services. Actual profits at 1/1/42 are approximately

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INDUSTRIA, HIGHWAY AND MARINE ENGINEERING
AND CONSTRUCTION. ALSO ELECTRICAL AND MECHANICAL

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TABLEAU 1. Produit intérieur brut, en termes de revenus
ALBERTA(1)

1988	1989	1990	1991	1992	1993	1994	Numéro de matrice CANSIM 2519	n°
millions de dollars								
30,251	32,350	35,080	36,719	37,374	38,392	39,509	Rémunération des salariés(2)	1
8,716	8,491	6,723	4,253	4,313	5,893	7,382	Bénéfices des sociétés avant impôts	2
8,220	9,099	10,549	9,873	9,410	9,804	9,743	Intérêts et revenus divers de placements	3
908	234	28	1	218	567	378	Revenu comptable net des exploitants agricoles au titre de la production agricole(3)	4
2,786	2,934	3,040	3,113	3,256	3,378	3,446	Revenu net des entreprises individuelles non agricoles, loyers concrets	5
-150	-194	-96	177	-207	-212	-356	Ajustement de la valeur des stocks	6
48,761	50,910	55,358	53,938	54,570	57,857	60,443	Revenu intérieur net au coût des facteurs	7
3,519	4,048	4,496	5,453	5,735	6,360	7,260	Impôts indirects moins subventions	8
10,510	10,813	11,631	12,147	12,674	12,688	13,548	Provisions pour consommation de capital	9
-319	318	194	-18	491	1,230	987	Divergence statistique	10
62,471	66,089	71,848	71,520	73,370	78,105	82,218	Produit intérieur brut aux prix du marché	11
58,952	62,041	67,150	66,067	67,535	71,755	74,958	Produit intérieur brut au coût des facteurs (11-8)	12

Voir note(s) à la fin des tableaux statistiques.

TABLEAU 2. Produit intérieur brut, en termes de dépenses
ALBERTA

1988	1989	1990	1991	1992	1993	1994	Numéro de matrice CANSIM 2631	n°
millions de dollars								
33,398	36,162	38,798	40,009	40,779	41,935	43,895	Dépenses personnelles en biens et services de consommation	1
9,050	5,541	5,747	5,484	5,365	5,766	6,236	Biens durables	2
3,411	3,534	3,794	3,891	3,938	4,082	4,216	Biens semi-durables	3
8,463	8,938	8,859	10,121	10,365	10,486	10,919	Biens non durables	4
16,474	18,081	19,869	20,513	21,071	21,659	22,524	Services	5
11,027	11,904	12,613	13,367	13,849	14,207	15,807	Dépenses publiques courantes en biens et services	6
1,516	1,822	2,018	1,721	1,786	1,778	1,728	Investissement des administrations publiques:	7
1,508	1,534	1,716	1,430	1,443	1,478	1,417	Capital fixe	8
307	288	302	291	315	302	311	Construction	9
4	-	5	-3	-3	-	-	Machines et matériel	10
							Stocks	
14,324	14,571	15,788	14,311	14,877	15,824	16,365	Investissement des entreprises:	11
2,516	3,060	3,329	3,337	4,445	4,428	4,393	Capital fixe	12
6,829	6,651	7,324	6,967	5,966	6,628	7,586	Construction résidentielle	13
4,879	4,570	4,836	3,367	4,268	4,568	4,578	Construction non résidentielle	14
757	329	202	385	-710	851	284	Machines et matériel	15
436	345	213	287	509	50	203	Stocks	16
321	-16	11	98	-201	801	83	Non agricoles	17
							Agricoles et dérivées en circuit commercial	
33,160	35,347	36,943	39,072	37,540	42,487	47,218	Exportations de biens et services	18
15,217	16,325	17,837	17,752	20,087	22,496	25,770	Exportations aux autres pays	19
12,863	14,275	15,910	15,791	18,006	20,352	23,502	Marchandises	20
2,354	2,050	1,827	1,971	1,981	2,144	2,268	Immobilités	21
17,943	19,022	19,106	17,320	17,783	19,901	21,448	Exportations aux autres provinces	22
10,141	13,811	13,234	11,242	11,251	12,808	14,013	Marchandises	23
4,802	5,411	5,872	6,078	6,502	7,183	7,435	Immobilités	24
32,334	33,729	34,062	33,358	34,490	37,348	40,113	Ventes: importations de biens et services	25
11,181	11,354	11,962	12,417	13,406	15,013	16,291	Importations des autres pays	26
8,929	8,958	9,827	9,831	10,790	12,014	13,316	Marchandises	27
2,232	2,396	2,335	2,456	2,715	2,996	2,975	Immobilités	28
21,173	22,375	22,130	20,941	20,962	22,355	23,822	Importations des autres provinces	29
13,803	14,314	12,903	11,487	11,206	12,006	13,089	Marchandises	30
7,370	8,061	9,227	9,454	9,754	10,329	10,733	Immobilités	31
319	-217	-194	16	-490	-1,229	-964	Divergence statistique	32
82,471	88,989	91,648	91,520	93,370	98,105	102,218	Produit intérieur brut aux prix du marché	33
80,585	84,459	89,180	88,408	91,063	93,544	95,795	Demande intérieure finale (1-6+7-11)	34

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Provincial Economic Accounts, Annual Estimates, 1981-1994

Comptes économiques provinciaux, estimations annuelles, 1981-1994

TABLE 1. Gross Domestic Product, Income Based
ALBERTA(1)

No.	CANSIM matrix No. 2613	1981	1982	1983	1984	1985	1986	1987
millions of dollars								
1	Wages, salaries and supplementary labour income(2)	22,438	24,770	24,531	24,982	26,918	27,384	27,388
2	Corporation profits before taxes	8,773	8,501	9,990	11,784	12,882	8,836	8,970
3	Interest and miscellaneous investment income	8,367	9,430	10,229	11,010	11,183	8,138	7,877
4	Accrued net income of farm operators from farm production(3)	621	79	133	-42	80	432	188
5	Net income of non-farm unincorporated business, including rent	1,426	1,883	1,978	2,160	2,380	2,408	2,817
6	Inventory valuation adjustment	-850	-380	-226	-205	-121	-5	-984
7	Net Domestic Income at factor cost	40,864	44,019	46,738	48,787	50,598	44,126	46,323
8	Indirect taxes less subsidies	3,493	2,932	1,305	882	1,884	2,318	2,897
9	Capital consumption allowances	8,865	7,410	8,276	9,082	9,843	10,530	10,847
10	Statistical discrepancy	835	882	270	473	272	-180	541
11	Gross Domestic Product at market prices	51,777	58,213	56,889	60,184	64,574	66,844	64,823
12	Gross Domestic Product at factor cost (11-8)	48,294	52,381	55,254	59,342	62,250	54,386	56,386

See footnote(s) at the end of statistical tables.

TABLE 2. Gross Domestic Product, Expenditure Based
ALBERTA

No.	CANSIM matrix No. 2631	1981	1982	1983	1984	1985	1986	1987
millions of dollars								
1	Personal expenditure on consumer goods and services	21,178	23,101	24,808	25,454	25,798	29,218	31,118
2	Durable goods	3,469	3,108	3,235	3,488	3,660	4,349	4,584
3	Semi-durable goods	2,448	2,485	2,589	2,675	2,777	3,080	3,382
4	Non-durable goods	5,677	8,343	8,983	7,527	7,267	7,870	8,213
5	Services	9,623	11,158	11,988	12,217	12,298	14,170	15,219
6	Government current expenditure on goods and services	6,340	7,324	6,542	8,705	8,218	8,885	10,281
Government investment								
7	Fixed capital	2,187	2,839	2,241	1,908	3,148	2,137	1,913
8	Construction	1,910	2,538	2,078	1,681	1,738	1,863	1,657
9	Machinery and equipment	277	300	225	278	242	284	284
10	Inventories	5	5	-4	2	-3	-3	-3
Business investment								
11	Fixed capital	18,513	14,957	11,877	10,880	11,779	10,562	11,342
12	Residential construction	3,194	2,614	2,067	1,325	2,840	1,880	2,250
13	Non-residential construction	8,823	8,007	6,098	5,779	8,774	5,718	5,351
14	Machinery and equipment	4,696	4,335	3,721	3,375	3,391	3,150	3,301
15	Inventories	129	-1,285	-806	-405	121	715	-683
16	Non-farm	118	-985	-470	128	131	225	-789
17	Farm and grain in commercial channels	11	-78	-186	-531	-10	510	-24
18	Exports of goods and services	30,669	32,833	34,672	37,342	38,838	30,727	32,758
19	Exports to other countries	12,716	12,971	12,303	14,522	14,568	13,124	14,202
20	Merchandise	11,466	11,807	11,540	12,976	13,038	11,383	12,210
21	Non-merchandise	1,250	1,164	1,354	1,546	1,531	1,771	1,992
22	Exports to other provinces	17,953	19,662	21,969	22,030	23,270	17,543	18,758
23	Merchandise	14,664	16,063	18,237	19,038	18,886	12,385	13,247
24	Non-merchandise	3,289	3,579	3,732	3,992	4,385	4,808	4,319
25	Deduct: Imports of goods and services	24,850	23,732	24,351	23,322	26,213	28,674	29,840
26	Imports from other countries	9,198	8,378	8,237	9,218	9,779	10,082	10,337
27	Merchandise	7,215	6,344	6,363	7,223	7,784	7,981	7,882
28	Non-merchandise	1,983	2,034	1,874	1,995	2,285	2,098	2,455
29	Imports from other provinces	15,452	15,354	16,114	14,104	16,434	16,414	18,338
30	Merchandise	10,363	10,632	11,036	12,296	10,795	10,343	12,152
31	Non-merchandise	4,459	4,722	5,078	4,808	5,639	5,571	6,186
32	Statistical discrepancy	634	-681	-270	-472	-272	180	-140
33	Gross Domestic Product at market prices	51,777	58,213	56,889	60,184	64,574	66,844	64,823
34	Final domestic demand (1+6+7+11)	48,298	48,221	47,278	48,749	50,305	57,998	54,824

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Comptes économiques provinciaux, estimations préliminaires, 1987-1994

TABLEAU 1. Produit intérieur brut, en termes de revenus
CANADA(1)

1988	1989	1990	1991	1992	1993	1994	Número de matrice CANSIM 2610	n°
millions de dollars								
327 823	333 432	372 047	391 843	390 741	400 533	412 980	Rémunération des salariés(2)	
64 867	60 093	44 814	33 706	33 063	39 789	58 243	Bénéfices des sociétés avant impôts	1
45 207	52 735	59 524	56 299	57 070	55 407	56 906	Intérêts et revenus divers de placements	2
4 275	3 042	2 065	1 443	1 095	2 122	2 152	Revenu comptable net des exploitants agricoles au titre de la production agricole(3)	3
32 803	34 481	34 859	35 784	36 858	38 248	39 028	Revenu net des entreprises individuelles non agricoles, loyers compris	4
-2 465	-1 580	-382	1 363	-3 199	-2 038	-5 414	Ajustement de la valeur des stocks	5
471 975	502 363	512 967	510 740	516 218	535 241	561 895	Revenu intérieur net au coût des facteurs	6
67 790	76 214	70 882	79 985	84 349	88 862	93 353	Impôts indirects moins subventions	7
68 128	72 362	78 594	81 822	84 363	86 882	91 481	Provisions pour consommation de capital	8
-1 087	-201	1 244	2 419	2 938	2 873	1 867	Divergence statistique	9
805 906	850 748	860 467	874 784	888 361	911 858	948 608	Produit intérieur brut aux prix du marché	10
538 118	574 534	597 805	594 781	603 542	622 796	655 223	Produit intérieur brut au coût des facteurs (11-5)	11
								12

Voir notes 1 à 5 à la fin des tableaux statistiques

TABLEAU 2. Produit intérieur brut, en termes de dépenses
CANADA

1988	1989	1990	1991	1992	1993	1994	Número de matrice CANSIM 2622	n°
millions de dollars								
349 837	378 833	399 319	412 246	423 055	437 289	454 302	Dépenses personnelles en biens et services de consommation	1
24 570	27 533	26 287	23 856	23 759	26 203	28 485	Biens durables	2
35 220	37 068	37 267	37 742	38 245	39 282	41 863	Biens semi-durables	3
73 648	99 736	104 561	109 581	112 870	115 820	117 284	Biens non durables	4
186 501	184 596	200 494	210 867	218 581	225 914	234 870	Services	5
114 472	124 108	136 157	144 408	149 731	153 121	151 289	Dépenses publiques courantes en biens et services	6
13 690	13 383	16 810	18 434	16 079	16 448	17 189	Investissement des administrations publiques	7
10 796	11 949	13 190	13 080	12 665	12 836	13 589	Capital fixe	8
2 852	3 314	3 420	3 354	3 414	3 812	3 580	Construction	9
NA	-3	87	-37	-40	-4	-1	Machines et matériel	10
							Stocks	11
119 100	130 812	124 768	116 254	112 078	110 484	119 186	Investissement des entreprises	12
43 870	48 131	44 006	39 791	43 705	42 884	45 962	Capital fixe	13
32 445	35 724	36 981	35 168	29 519	27 186	29 541	Construction résidentielle	14
42 785	45 937	43 799	41 293	36 662	40 425	43 963	Construction non résidentielle	15
3 731	2 610	-2 302	-3 638	-3 240	1 267	2 444	Machines et matériel	16
4 319	3 029	-3 526	-3 683	-2 066	267	2 460	Stocks	17
-568	581	624	45	-574	1 500	-55	Non agricoles	18
							Agricoles et céréales en circuit commercial	19
302 224	315 958	315 983	302 171	319 518	355 486	404 353	Exportations de biens et services	20
165 306	183 903	188 317	163 943	180 402	208 223	240 392	Exportations aux autres pays	21
137 779	141 514	155 588	140 221	155 794	181 341	219 367	Marchandises	22
21 520	22 389	23 361	23 722	24 812	26 882	30 005	Invisibles	23
142 915	152 058	147 066	138 228	133 112	147 237	154 951	Exportations aux autres provinces	24
100 577	108 278	91 377	81 794	80 828	85 552	90 532	Marchandises	25
42 338	48 779	53 239	55 434	58 184	61 685	64 029	Invisibles	26
299 259	318 134	318 289	310 481	325 950	359 745	398 269	Moins: Importations de biens et services	27
156 584	168 079	171 223	172 453	166 738	212 508	243 308	Importations des autres pays	28
27 362	35 455	36 858	38 816	36 637	37 537	40 881	Marchandises	29
27 322	30 634	34 365	36 637	37 537	40 881	41 031	Invisibles	30
142 915	152 058	147 066	138 228	133 112	147 237	154 951	Importations des autres provinces	31
20 877	25 076	21 827	21 734	20 828	22 532	24 932	Marchandises	32
42 478	46 779	53 239	55 434	58 184	61 685	64 029	Invisibles	33
1 987	201	-1 244	-2 419	2 938	-1 572	-1 967	Divergence statistique	34
75 804	850 748	869 467	874 784	888 361	911 858	948 608	Produit intérieur brut aux prix du marché	35
71 29	542 118	575 852	599 370	603 542	622 796	655 223	Commande intérieure finale (1+6+7+11)	36

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Provincial Economic Accounts, Annual Estimates, 1981-1994

Comptes économiques provinciaux, estimations annuelles, 1981-1994

TABLE 1. Gross Domestic Product, Income Based
CANADA[1]

No.	CANSIM matrix No. 2610	1981	1982	1983	1984	1985	1986	1987
millions of dollars								
1	Wages, salaries and supplementary labour income[2]	197,910	211,524	221,800	238,849	257,518	274,801	298,834
2	Corporation profits before taxes	37,634	29,844	37,072	45,855	49,490	48,365	54,571
3	Interest and miscellaneous investment income	32,487	35,337	38,433	40,888	40,302	39,989	36,067
4	Accrued net income of farm operators from farm production[3]	3,763	2,455	2,568	3,360	2,806	3,940	2,890
5	Net income of non-farm unincorporated business, including rent	14,100	16,860	21,061	21,927	26,447	26,995	30,977
6	Inventory valuation adjustment	-7,217	-3,278	-2,559	-2,625	-1,780	-1,512	-3,147
7	Net Domestic Income at factor cost	278,647	290,828	314,275	350,374	374,896	389,486	426,653
8	Indirect taxes less subsidies	36,457	38,908	40,135	42,714	47,312	53,987	59,719
9	Capital consumption allowances	40,677	44,358	47,080	50,884	53,328	60,595	64,116
10	Statistical discrepancy	173	380	2,247	863	43	889	1,710
11	Gross Domestic Product at market prices	355,944	374,442	405,717	444,735	477,368	506,444	551,597
12	Gross Domestic Product at factor cost (11-8)	319,537	335,534	365,582	402,021	430,776	461,859	491,878

See footnotes at the end of statistical tables.

TABLE 2. Gross Domestic Product, Expenditure Based
CANADA

No.	CANSIM matrix No. 2822	1981	1982	1983	1984	1985	1986	1987
millions of dollars								
1	Personal expenditure on consumer goods and services	196,191	210,509	231,452	251,645	274,568	297,101	329,799
2	Durable goods	28,116	26,081	30,032	34,698	40,278	44,866	49,430
3	Semi-durable goods	21,847	22,359	24,131	26,062	28,149	30,904	33,148
4	Non-durable goods	59,423	66,443	89,688	74,632	79,989	83,867	86,019
5	Services	96,705	98,848	107,801	116,232	126,119	138,648	162,172
6	Government current expenditure on goods and services	68,732	78,855	84,571	99,069	95,519	100,129	106,836
Government investment:								
7	Fixed capital	9,447	10,519	10,395	11,390	12,886	13,547	12,996
8	Construction	7,903	8,960	8,872	8,303	10,480	10,067	10,244
9	Machinery and equipment	1,544	1,558	1,723	2,487	2,390	2,510	2,542
10	Inventories	-205	89	-45	20	-44	-36	-38
Business investment:								
11	Fixed capital	76,872	70,808	70,832	73,309	81,312	88,993	103,831
12	Residential construction	20,549	17,587	21,312	22,328	25,822	28,868	39,524
13	Non-residential construction	27,233	26,985	24,271	24,575	24,797	28,520	27,813
14	Machinery and equipment	28,870	26,836	25,249	26,308	29,384	30,661	30,894
15	Inventories	1,391	-9,522	-2,063	4,741	2,345	2,592	3,109
16	Non-farm	897	-9,886	-2,108	5,766	1,897	1,745	3,552
17	Farm and grain in commercial channels	894	83	-747	-1,027	348	847	-443
18	Exports of goods and services	195,379	196,377	210,569	238,871	256,813	298,919	278,514
19	Exports to other countries	96,890	96,851	103,444	126,035	134,819	138,119	145,418
20	Merchandise	84,432	84,394	90,558	111,329	119,681	120,318	126,340
21	Non-merchandise	12,448	12,257	12,886	14,706	15,358	17,801	19,076
22	Exports to other provinces	98,499	99,726	107,225	112,636	120,894	117,800	130,098
23	Merchandise	75,148	74,416	80,322	84,073	96,120	83,854	92,684
24	Non-merchandise	23,351	25,310	26,903	28,563	31,574	34,146	37,414
25	Deduct: Imports of goods and services	191,500	182,324	197,267	223,268	244,262	251,139	275,800
26	Imports from other countries	93,001	82,596	89,832	110,632	120,996	139,268	142,532
27	Merchandise	77,140	66,738	73,598	91,492	108,870	110,374	113,119
28	Non-merchandise	16,561	15,858	16,234	19,140	20,718	28,995	29,383
29	Imports from other provinces	98,499	99,726	107,225	112,636	120,894	117,800	130,098
30	Merchandise	75,148	74,416	80,322	84,073	96,120	83,854	92,684
31	Non-merchandise	23,351	25,310	26,903	28,563	31,574	34,146	37,414
32	Statistical discrepancy	-173	-349	-2,247	862	43	889	-1,710
33	Gross Domestic Product at market prices	355,944	374,442	405,717	444,735	477,368	506,444	551,597
34	Final domestic demand (11+6+7+11)	351,107	370,491	397,250	425,433	454,220	489,187	545,322

Financial Statistics for Enterprises

Statistiques financières des entreprises

Industry 9 - Petroleum and natural gas

Branch 9 - Pétrole et gaz naturel

Industry 10 - Other fuels

Branch 10 - Autres combustibles

	1993	1994	1993	1994
Units of dollar - Unité de dollar				
Balance Sheet - Bilan				
Assets - Actifs	5,173	5,219	131,871	146,386
Cash and deposits - Encaisse et dépôts	210	256	2,980	2,665
Accounts receivable and accrued revenue - Comptes débiteurs et revenu couru	323	297	12,883	13,814
Inventories - Stocks	535	625	4,733	5,245
Investments and accounts with affiliates - Placements et comptes auprès des affiliées	629	1,037	11,386	15,448
Portfolio investments - Placements de portefeuille	42	27	5,837	5,066
Loans - Prêts	30	31	463	583
Capital assets, net - Immobilisations, nettes	2,904	2,778	90,512	86,181
Other assets - Autres actifs	450	170	4,196	4,844
Liabilities - Passifs	3,475	3,573	78,871	87,873
Accounts payable and accrued liabilities - Comptes créditeurs et obligations courues	402	351	13,523	15,000
Loans and accounts with affiliates - Emprunts et comptes auprès des affiliées	953	1,279	8,490	10,839
Borrowing - Emprunts				
Loans and overdrafts - Emprunts et découverts				
From banks - Auprès de banques	943	971	5,595	9,329
From others - Auprès d'autres	90	105	4,832	4,092
Bankers' acceptances and paper - Acceptations bancaires et papier	1	1	4,104	5,481
Bonds and debentures - Obligations	174	165	28,952	26,934
Mortgages - Hypothèques	61	58	341	431
Deferred income tax - Impôt sur le revenu différé	431	458	10,128	10,334
Other liabilities - Autres passifs	419	288	4,238	5,128
Equity - Avoir	1,698	1,644	52,980	58,210
Share capital - Capital-actions	1,758	1,697	34,088	35,945
Contributed surplus and other - Surplus d'apport et autres	620	808	4,098	4,785
Retained earnings - Bénéfices non répartis	-879	-761	14,179	16,501
Current assets - Actif à court terme	1,073	1,033	24,553	26,820
Current liabilities - Passif à court terme	554	498	22,368	25,361
Income Statement - État des résultats				
Operating Revenue - Revenu d'exploitation	3,287	2,830	89,898	86,388
Sales of goods and services - Ventes de biens et de services	3,286	2,802	87,808	86,150
Other operating revenue - Autres revenus d'exploitation	31	28	2,380	2,244
Operating Expenses - Dépenses d'exploitation	2,819	2,222	81,488	83,840
Depreciation, depletion and amortization - Dépréciation, épuisement et amortissement	269	247	8,817	8,841
Other operating expenses - Autres dépenses d'exploitation	2,550	1,974	73,069	75,400
Operating profit - Bénéfice d'exploitation	468	608	8,410	10,348
Other Revenue - Autres revenus	49	62	1,288	811
Interest and dividends - Intérêts et dividendes	49	62	1,180	811
Other Expenses - Autres dépenses	123	134	4,301	4,251
Interest on borrowing - Intérêts sur les emprunts				
Short-term debt - Dette à court terme	10	9	400	446
Long-term debt - Dette à long terme	113	125	3,899	3,806
Gains/losses - Gains/pertes	-29	-2	-77	-4
Gains on sale of assets - Gains sur la vente d'actifs	-	-	634	388
Others - Autres	-28	-2	-711	-391
Profit before income tax - Bénéfice avant impôt sur le revenu	346	334	8,333	5,213
Income tax - Impôt sur le revenu	66	83	1,835	2,512
Equity in affiliates' earnings - Part des gains des affiliées	-	-	251	460
Profit before extraordinary gains - Bénéfice avant gains extraordinaires	277	251	3,394	4,783
Extraordinary gains - Gains extraordinaires	-	-	-	5
Net profit - Bénéfice net	277	251	3,394	4,788

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Industry 9 - Petroleum and natural gas
 Branche 9 - Pétrole et gaz naturel
 Industry 10 - Other fuels
 Branche 10 - Autres combustibles

1988 1989 1990 1991
 Millions of dollars - Millions de dollars

Balance Sheet - Bilan

Assets - Actifs

Cash and deposits - Encaisse et dépôts
 Accounts receivable and accrued revenue - Comptes débiteurs et revenu couru
 Inventories - Stocks
 Investments and accounts with affiliates - Placements et comptes auprès des affiliées
 Portfolio investments - Placements de portefeuille
 Loans - Prêts
 Capital assets, net - Immobilisations, nettes
 Other assets - Autres actifs

Liabilities - Passifs
 Accounts payable and accrued liabilities - Comptes créditeurs et exigibilités courues
 Loans and accounts with affiliates - Emprunts et comptes auprès des affiliées
 Borrowing - Emprunts

Loans and overdrafts - Emprunts et découverts
 From banks - Auprès de banques
 From others - Auprès d'autres
 Bankers' acceptances and paper - Acceptations bancaires et papier
 Bonds and debentures - Obligations
 Mortgages - Hypothèques
 Deferred income tax - Impôt sur le revenu différé
 Other liabilities - Autres passifs

Equity - Avoir

Share capital - Capital-actions
 Contributed surplus and other - Surplus d'apport et autres
 Retained earnings - Bénéfices non répartis

Current assets - Actif à court terme
 Current liabilities - Passif à court terme

Income Statement - État des résultats

Operating Revenue - Revenu d'exploitation
 Sales of goods and services - Ventes de biens et de services
 Other operating revenue - Autres revenus d'exploitation

Operating Expenses - Dépenses d'exploitation
 Depreciation, depletion and amortization - Dépréciation, épuisement et amortissement
 Other operating expenses - Autres dépenses d'exploitation

Operating profit - Bénéfice d'exploitation

Other Revenue - Autres revenus
 Interest and dividends - Intérêts et dividendes

Other Expenses - Autres dépenses
 Interest on borrowing - Intérêts sur les emprunts
 Short-term debt - Dette à court terme
 Long-term debt - Dette à long terme

Gains/losses - Gains/pertes
 Gains on sale of assets - Gains sur la vente d'actifs
 Others - Autres

Profit before income tax - Bénéfice avant impôt sur le revenu
 Income tax - Impôt sur le revenu

Equity in affiliates' earnings - Part des gains des affiliées
 Profit before extraordinary gains - Bénéfice avant gains extraordinaires

Extraordinary gains - Gains extraordinaires

Net profit - Bénéfice net

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Reference Table 52
Total Government Revenues
National Income and Expenditure Accounts Basis
1950-1994
(millions of dollars)

Year	Direct taxes persons	Direct taxes corporations	Withholding taxes	Indirect taxes	Transfers from persons	Investment income	Capital income	Total CPP and QPP	Total revenues ⁽¹⁾
1950	915	993	54	2,119	62	280	201	—	4,634
1951	1,279	1,431	56	2,677	77	285	248	—	6,353
1952	1,588	1,403	55	2,901	82	368	265	—	6,662
1953	1,748	1,244	54	3,107	84	378	280	—	6,892
1954	1,775	1,115	58	3,131	73	373	293	—	6,819
1955	1,855	1,310	67	3,307	76	420	320	—	7,458
1956	2,127	1,443	69	3,838	97	517	266	—	8,487
1957	2,350	1,378	87	4,095	106	490	385	—	8,807
1958	2,214	1,350	48	4,186	124	542	404	—	9,046
1959	2,444	1,815	74	4,551	224	604	434	—	10,710
1960	2,794	1,588	79	4,901	234	649	465	—	11,528
1961	2,944	1,649	116	5,112	247	721	539	—	12,445
1962	3,180	1,753	125	5,757	256	795	579	—	13,270
1963	3,387	1,891	127	6,062	268	899	636	—	14,058
1964	3,917	2,101	140	6,826	309	982	682	—	16,633
1965	4,431	2,197	167	7,674	370	1,080	789	—	19,427
1966	5,792	2,335	204	8,592	393	1,226	865	724	21,877
1967	7,009	2,396	218	9,402	436	1,479	937	984	24,351
1968	8,244	2,332	209	10,300	600	1,752	984	1,040	29,011
1969	10,055	3,221	234	11,304	826	2,276	1,003	1,190	31,800
1970	11,547	3,070	269	11,925	1,059	2,724	1,204	1,327	35,247
1971	13,042	3,246	278	12,918	1,088	3,217	1,388	1,478	39,704
1972	14,631	3,320	287	14,616	1,016	3,739	1,805	1,657	46,135
1973	17,041	5,079	322	16,525	1,030	4,423	2,117	1,873	54,170
1974	21,257	7,051	430	20,663	1,107	6,009	2,401	2,780	73,427
1975	24,138	7,494	465	21,287	1,119	7,174	2,794	3,282	81,399
1976	28,431	7,128	504	24,666	1,457	8,446	3,158	3,666	89,283
1977	31,820	7,238	534	27,027	1,644	9,978	3,823	4,231	101,460
1978	33,723	8,184	582	28,836	1,974	12,467	4,908	4,367	114,508
1979	37,400	10,038	754	32,112	2,315	14,932	4,553	5,670	141,640
1980	42,803	12,078	993	35,505	2,434	17,940	5,313	7,308	151,347
1981	52,847	12,796	1,110	45,936	2,686	20,334	5,884	8,042	177,589
1982	58,943	11,755	1,178	48,248	3,033	22,309	6,287	9,016	191,031
1983	63,605	12,320	1,043	40,150	3,434	25,247	6,773	10,729	205,513
1984	68,223	14,984	1,100	54,957	3,470	28,182	7,082	11,260	226,597
1985	75,115	15,463	1,069	58,789	3,747	29,656	7,371	12,489	250,839
1986	85,175	14,573	1,675	64,338	3,993	28,487	7,640	13,500	270,839
1987	94,501	16,990	1,214	71,365	4,253	29,373	8,289	14,170	290,033
1988	107,178	17,586	1,670	79,030	4,629	32,527	9,488	15,720	297,414
1989	112,990	18,566	1,537	86,869	5,355	36,527	9,562	17,118	310,179
1990	132,014	16,834	1,719	87,694	3,229	38,744	9,879	18,257	324,491
1991	136,140	15,015	1,510	93,630	3,884	37,727	10,381	19,653	324,491
1992	139,441	15,117	1,509	99,742	4,177	38,008	10,381	19,653	324,491
1993	140,505	14,618	1,641	99,977	4,412	38,334	10,381	19,653	324,491
1994	145,269	17,056	1,590	104,611	4,566	40,943	10,381	19,653	324,491

(1) Canada Pension Plan (CPP) and Quebec Pension Plan (QPP) employer-employee contributions and investment income are included in total government direct taxes, persons, and investment income respectively.
(2) Includes CPP and QPP. Excludes intergovernmental transfers.
Source: Statistics Canada, National Income and Expenditure Accounts (13-001)

A-4

Tax Avoiding Corporation	Tax Year	Pre-Tax Profit (\$mil)	Income Tax Paid (\$thou)	Donor Corporation	1993 \$	1994 \$
Agra Industries ¹	1993	2.86	0	Agra Industries	12,200	5,450
Alberta Natural Gas ¹	1990	39.6	- 222	Alberta Natural Gas	5,200	5,000
	1991	19.6	- 1,564			
Bovar ¹	1991	1.8	0	Bovar	3,100	1,500
Burns Fry Holdings ¹	1992	37.0	0	Burns Fry Limited	13,550	9,800
Canadian Natural Resources Limited ¹	1993	59.2	0	Canadian Natural Resources Limited	1,800	900
Extendicare Health Services ¹	1993	20.3	0	Extendicare Health Services	4,800	4,000
Finning ^{1 & 2}	1991	3.1	- 2,477	Finning	4,800	4,000
	1992	8.5	0			
Fording Coal ¹	1992	25.4	- 5,049	Fording Coal	1,750	4,800
Hillcrest Resources ¹	1993	5.1	0	Hillcrest Resources	2,800	2,900
	1992	4.2	0			
Imperial Oil Resources Limited ¹	1991	142.9	- 45,699	Imperial Oil Resources Limited	12,800	6,000
	1993	92.0	0	Imperial Oil Limited	11,200	18,000
Mark Resources ¹	1993	9.9	0	Mark Resources	5,000	5,000
Midland Walwyn ^{1 & 2}	1993	63.0	0	Midland Walwyn	2,200	7,450
	1992	27.5	0			
Montreal Trustco ¹	1991	39.1	- 151	Montreal Trust	1,100	450
Nesbitt Thomson Group ¹	1991	50.0	0	Nesbitt Thomson Deacon Inc.	14,300	18,000
Numac Oil and Gas ¹	1992	4.5	- 54	Numac Oil and Gas	3,150	1,000
Ranger Oil ²	1992	US\$16	0	Ranger Oil	7,800	3,800
Remington Energy ¹	1993	0.7	- 4.7	Remington Energy	2,375	500
Rio Alto Exploration ^{1 & 2}	1993	21.4	0	Rio Alto Exploration	500	500
	1992	3.9	0			
Royal Bank ³	1992	63	- 65,000	Royal Bank	7,200	7,000
Royal Insurance Co. ³	1992	29.5	0	Royal Insurance Co.	2,800	1,000
Summit Resources ¹	1993	12.7	0	Summit Resources	500	500
	1992	4.8	0			
Trans Mountain Pipeline ¹	1992	25.6	- 940	Trans Mountain Pipeline	1,400	1,000
Unocal Canada ²	1992	21.4	0	Unocal Canada	1,100	450

NOTES:

- 1: Information on corporate pre-tax income and net tax paid collected by Alberta Federation of Labour from *Globe and Mail Report on Business* ("InfoGlobe") database, and published January, 1995.
- 2: Information on corporate pre-tax income and net tax paid collected by Ontario Federation of Labour and Ontario Coalition for Social Justice from *Globe and Mail Report on Business* ("InfoGlobe") database, and published January, 1995.
- 3: Information on corporate donations to Alberta provincial Progressive Conservative and Alberta provincial Liberal parties compiled by *Alberta Political Scan* from official party returns filed with Alberta's Chief Electoral Officer, and published July 29, 1994; 1993 was a general election year, so these figures combine annual and election period donations.
- 4: Negative amounts (e.g., "- 2,477") noted in this column indicate the value of a tax credit (in thousands of dollars) that was paid to the corporate tax return filer for that particular tax year (financed, of course, by other government revenues, including the taxes you paid).

CORPORATE INCOME TAX & ROYALTY REVENUE

Fiscal year ended March 31, in (000's of \$)

Corporate Tax:

1983	565,727
1984	730,840
1987	321,483
1993	636,842
1994	854,000

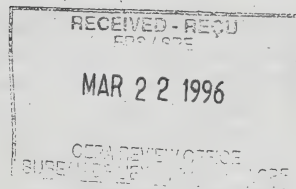
<u>Royalties:</u>	1983	1984	1987	1993	1994
Crude Oil	2,337.9	2,872.9	996.7	1,008.5	766.0
Natural gas	1,876.4	1,694.1	1,097.2	1,069.3	1,410.0
Synthetic crude	362.3	303.8	12.0	64.9	66.0
Coal	14.0	10.8	7.1	16.0	14.0

ENVIRONMENTAL LAW CENTRE



March 18, 1996

The Honourable Sergio Marchi
Minister of Environment
#509-S, Centre Block
House of Commons
111 Wellington St.
Ottawa, ON
K1A 0A3



Dear Mr. Marchi:

Re: CEPA Review: The Government Response

**The Environmental Law Centre,
CEPA Review and
"Sustainable Development"**

The core conviction of the Alberta *Environmental Law Centre*, a non-profit, public interest, charitable organization, is that environmental laws should work to protect the environment. Given this conviction we read with disappointment the *Government's Response to the Standing Committee's Report, Environmental Protection Legislation Designed for the Future -- A Renewed CEPA*.

Having studied the *Recommendations of the Standing Committee on Environment and Sustainable Development*, we expected the Government Response to make proposals for CEPA reform demonstrating federal regulatory leadership. We looked forward to proposals to cure CEPA's current inability to effectively and efficiently deal with toxic chemicals. We anticipated proposals embracing pollution prevention, proposals requiring all biotechnology products to be evaluated under CEPA, proposals strengthening citizens participation, enforcement and litigation rights. We awaited proposals reflecting Canada's accepting its international obligations such as to regulate for biodiversity protection. In short, we expected proposals to reform CEPA to better protect the environment.

We did not get what we expected. The Government's response is not to renew and revise CEPA to better protect the environment. Instead it indicates Government's using what should be environmental protection legislation to pursue economic goals in the name of "sustainable development".

Recycled Paper

Unfortunately, the concept Government calls "sustainable development" is a far cry from that put forward by the Committee, or the concept advocated by the Brundtland Commission. Properly conceived, sustainable development is to be applied to ensure that our economic decisions do not compromise our environment, not so that our environmental decisions do not compromise economy. The Government's Response mis-applies the concept. It calls upon sustainable development to justify water down environmental legislation, to accommodate special interests such as industry, natural resources and agriculture over furthering the public interest in a safe and healthy environment.

It is not too late for Government to We urge government to reconsider its response and amend CEPA to for make it a statute which protects environment. Some of our main concerns are as follows:

No Further Incursions

There must be no more incursions on CEPA or on where the Government in its Response has accepted the Parliamentary Committee's Recommendations.

No Harmonization in CEPA

Harmonization is extremely controversial. A multistakeholder harmonization study process exists through the CCME. CEPA must not be used to subvert or shortcut this process. We ask Government not to import any new harmonization concepts in CEPA.

Biotechnology

The Committee soundly analyzed the need for law reform to better regulate biotechnology products. CEPA should contain a new part requiring all biotechnology products be evaluated according to specified criteria, for their long-term, cumulative environmental and human health effects, and their impact on biodiversity.

Pollution Prevention

We urge Government to adopt the Committee's recommendation that CEPA require producers and users of toxic substances to provide pollution prevention plans. The Government Response proposes only an enabling power to require pollution prevention plans for toxic substances. An enabling power alone is not satisfactory.

Assessment of Substances

Canadians have spoken loudly and clearly about the ineffectualness and inefficiencies in CEPA's assessment processes. As to ineffectualness, because of CEPA's exacting assessment processes substances with apparent toxic properties have been assessed

as non-toxic, including toluene -- a petroleum based solvent found in paints, varnishes, pesticides adhesives and sealants. As to inefficiencies, administering departments have identified only 44 "priority" substances for toxicity assessment of the 23,000 chemicals on the Domestic Substances List. It has taken five years to assess these 44. 13 of the 44 have lost "priority status" due to insufficient data, including waste crankcase oils.

Along with the Committee we urge that CEPA be amended to allow for an inherent toxicity approach in addition to CEPA's current risk based assessment.

Phase Outs


The Committee recommended that CEPA require any substance on the Domestic Substances List (23,000 chemicals) which meets regulatory criteria for persistence and bioaccumulation be sunsetted and, any substance new to Canada which meets the criteria be banned. The Government Response proposes only the "virtual elimination" of substances on the Toxics Substances List (currently only 22). Scientific evidence continues to grow that persistent, bioaccumulative substances can cause severe health problems, disabilities and death. The Government Response is inadequate to meet the threat of these chemicals to its citizens and the Canadian environment. We appeal to Government to accept this vital Committee recommendation.

Public and Worker Rights

Citizens must have the right to know what chemicals are released into the atmosphere they live and work in. They must have the access to information to make informed choices when faced with chemicals in their environment. They must have sufficient participation, access to information rights and rights to facilitate their using the legal system when Canada's major environmental law is or may be violated. We urge that CEPA be amended to include an environmental bill of rights. The bill should give the public and workers access rights to information which could affect their environment or health; to receive notice of important environmental decisions and to give them the right to effectively participate in those decisions; to allow workers the right to refuse to pollute; to give the public and workers effective rights to sue or prosecute when CEPA is or may be violated.

As Minister of Environment it is your role to see that CEPA is legislation to protect the Canadian environment. As lawyers committed to better laws for environmental protection, as well as concerned citizens, we appeal to you to fulfill this role.

Yours truly,



Arlene J. Kwasniak
Staff Counsel
Environmental Law Centre



Environmental
Resource
Centre

03/22/96

02:31 PM

2/2

139271

The Honourable Sergio Marchi
Minister of the Environment
Terrasses de la Chaudière
Hull, PQ K1A 0H3
fax: (819) 953-3457

Rec'd - DCU - DOE

APR 12 1996

Requ - UCM - MDE

0-1025-31

Mr. Marchi:

The Environmental Resource Centre is greatly concerned about the state of protection for the environment and human health in Canada. We believe that proposals to reform the Canadian Environmental Protection Act will act only for the benefit of polluting industries and will leave citizens, wilderness and wildlife at the mercy of corporate decision-makers.

High standards for environmental protection must be maintained by the federal government. The Canadian people deserve the right to a clean environment, and must have rights to help them protect that environment. This must include the right to intervene in harmful activities; to sue polluters who break the law; and to receive information about damage being done to the environment, including releases of toxic substances.

As well, the Canadian government should ban or phase out the use and release of chemicals that are persistent and bioaccumulative, since the damage caused to organisms and ecosystems may take years to become apparent.

Pollution prevention rather than pollution control must become the main focus of management strategies. No longer can we allow industries to merely cut back on what they emit - we must work with them to reduce the materials that become pollutants.

Also, new biotechnologies must be regulated to protect the environment from unregulated releases of what may prove to be very harmful organisms and products.

In summary, we strongly urge the federal government to reconsider its proposal to reform CEPA, to address these concerns and others.

Sincerely,

Brian Staszewski

Brian Staszewski
Executive Director
Environmental Resource Centre

10511 Saskatchewan Drive Edmonton, Alberta
fax (403) 439-5081

T6E 4S1 phone (403) 433-8711
email: dc@ccinet.ab.ca

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

MAR 6 1992



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

HOWARD EPSTEIN

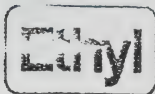
Address:

2396 CLIFTON ST

HALIFAX

N.S.

B3B1 4W1



ETHYL CANADA INC.
350 BURNHAMTHORPE RD. WEST
SUITE 600
MISSISSAUGA, ONTARIO L5B 3J1
TEL: 905-566-9951 FAX: 905-566-9962

President

March 21, 1996

Rec'd-DCU-DOE

138946

MAR 25 1996

Reçu-UCM-MDE

0-1025-1
0-1165-36/SI

The Honourable Sergio Marchi, P.C., M.P.
Minister of Environment
Room 103, Centre Block
House of Commons
Ottawa, Ontario K1A 0A6

Dear Minister:

RE: CEPA Review - Comments on the Government Response

Ethyl Canada appreciates the opportunity to provide you with its comments on the Government Response to the recommendations of the Standing Committee on Environment and Sustainable Development on a renewed CEPA. Ethyl endorses the principle that decisions under CEPA should be based on scientific investigation and risk assessment principles.

Ethyl, as you might expect, has been particularly interested in the fuels section of Chapter 8 of the Government Response. That section proposes a significant broadening of the Government's regulatory authority over fuel characteristics and components. Apart from issues around whether that increased scope is appropriate, the proposal fails to recognize that legitimate issues of fuel compatibility are equally the responsibility of engine and emission systems designers. Another fundamental concern in this area is the lack of any process to ensure proper scientifically-based decision-making, including risk and cost/benefit considerations. As matters now stand, the proposed changes to CEPA in the fuels area give no assurance of due process, and the industry is understandably nervous about the combination of unrestricted discretion and the expansion of regulatory authority suggested in the Government Response.

Ethyl believes that this combination is both poor public policy and inconsistent with the principles of scientific investigation and risk assessment being espoused in the Government Response. The regulation-making authority being proposed could directly affect the ongoing viability of significant portions of the fuels and fuel additives industries in Canada. At a minimum, we suggest that this section of CEPA include the right for affected parties to have the basis for any proposed regulation tested through the Board of Review process. This opportunity is available in respect of other substances subject to prohibition or regulation under CEPA, but is not mandatory for proposed regulations affecting fuels and fuel additives. There is no justification for continuing to deny an equivalent process to refiners and others in the fuels business, including Ethyl.

03/11/96

17:46

905 588 9962

ETHYL CANADA INC

002/002

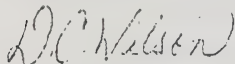
The Honourable Sergio Marchi
March 21, 1996
Page 2

Experience under the U.S. Clean Air Act also demonstrates that the development of regulation in this area raises real issues around appropriate test methodologies, definition of fleet characteristics, and related matters - all of which can affect the integrity of the conclusions drawn and the technical soundness of measures being considered. Accordingly, any regulatory framework proposed in this area needs to include, as an initial step, a mandatory right of access to the Board of Review process to settle appropriate testing methodologies and protocols.

We would welcome the opportunity to respond to any questions which you or your officials may have on reviewing these suggestions.

Yours very truly,

ETHYL CANADA INC.



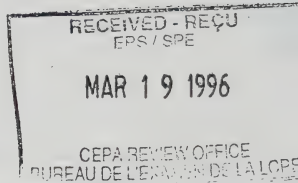
David C. Wilson
President

DCW/lbf

c:\dcw\marchi



Federation of Canadian Municipalities
Fédération canadienne des municipalités



March 18, 1996

Mayor John Les
Chilliwack, British Columbia
President
Président

Councillor Bryon Wilfert
Richmond Hill, Ontario
First Vice-President
Premier vice-président

Maire suppléant Claude Cantin
Québec (Québec)
Deuxième vice-président
Second Vice-President

Councillor Jae Eadie
Winnipeg, Manitoba
Third Vice-President
Troisième vice-président

Mayor D. Laurence Mawhinney
Lunenburg, Nova Scotia
Past President
Président sortant

James W. Knight
Executive Director
Directeur général

The Honourable Sergio Marchi, PC, MP
Minister of the Environment
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Minister:

The Federation of Canadian Municipalities (FCM) has been recognized since 1937 as the national voice of municipal governments. It represents the interests of all municipalities on policy and program matters within federal jurisdiction. Municipal governments constituting FCM's membership represent more than 20 million Canadians. Members include Canada's largest cities, small urban and rural communities and the 17 major provincial and territorial municipal associations. Municipal leaders from all parts of Canada assemble annually to establish FCM policy on key issues. The National Board of Directors meets quarterly to review policy and program matters.

At its meeting in Hull, Quebec on March 9, the National Board of Directors reviewed the federal government's response to the Commons Standing Committee report on the Canadian Environmental Protection Act (CEPA). The purpose of this letter is to advise you of the results of our Board's deliberations.

FCM is pleased that the government will strengthen CEPA's preventive approach. It is important, however, to recognize that there are some historic environmental problems which must be addressed. "Thinking globally, acting locally" highlights the importance of the municipal order of government in environmental matters. First and foremost, it is the mayor and members of council that citizens first approach when environmental problems occur. This holds true even when the municipality does not have any authority over the matter. Many of the problems and solutions listed

.../2



in Agenda 21 have their roots in local activities, so municipal governments have a key role to play in fostering sustainable development.

The federal government's response recognizes a strong partnership with the provinces and territories "in the field of environmental management and that these regimes provide the necessary "safety net" to ensure a safe and healthy environment for all Canadians". Greater cooperation and consultation with Aboriginal People is encouraged but municipal governments are ignored. CEPA should recognize explicitly that municipal governments shoulder significant responsibilities for environmental management and activities. As a first step, the shared approach advocated in CEPA should provide for municipal representation on the new Federal-Provincial Advisory Committee (FPAC). Municipal governments support federal and provincial environmental programs and consultative processes on a wide range of environmental issues. In return, they expect their efforts to be recognized and valued by other orders of government.

Another issue involves the burden of proof requirements of CEPA as regards avoidance of liability. Our solicitors believe that the current requirements constitute a reverse onus provision. They note in their interpretation that municipal governments are disproportionately affected by the legislation owing to their direct involvement in the delivery of environmental services and programs. The Act does not distinguish between entities such as business corporations and public service entities such as municipalities. Moreover, the Act does not set a ceiling for the potential liability of municipalities and their officers and employees. I urge you to review Section 125 with a view to protecting municipal governments against reverse onus.

FCM commends the federal government for its proposal to develop environmental codes of practice to preserve the quality of coastal areas and urges you to ensure full municipal participation in this process. FCM recommends that applicant and ocean disposal fees be used to provide for additional land-based facilities for the disposal of solid waste generated through shipping.

FCM is concerned that the regulatory gap under CEPA for Indian lands which are exempt from provincial laws has not been adequately addressed. FCM maintains that the same type of environmental legislation should apply to Indian lands as to municipalities. Where the local environment of municipalities is affected, municipal governments should be included in discussions and/or negotiations regarding environmental management on Indian lands.

As with other measures prescribed in CEPA, the revised provisions for emergency preparedness do not recognize the role of municipal governments in managing emergencies although they do recognize the roles of the federal, provincial, territorial governments and the self-government regimes of Aboriginal Peoples. FCM and municipal governments have been strong supporters of MIACC since its inception and have contributed to the standards, codes and guidelines developed by this multi-stakeholder organization. As a practical matter, municipal governments are the first to respond in emergencies.

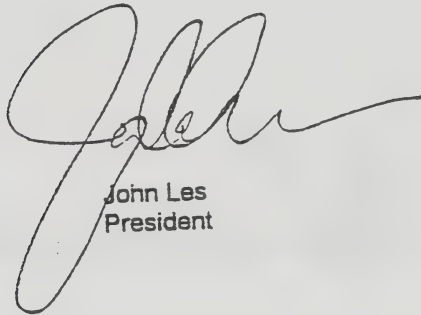
FCM supports greater monitoring of imports and exports of non hazardous solid wastes for final disposal. Individual municipal governments should be consulted on requests to import waste to a private landfill within their boundaries since the municipality's total remaining landfill capacity is affected.

FCM notes that a new CEPA provides the government with authority to control and ban the export and import of non hazardous solid waste. It is noted that industrialized countries are bound by the Basel Convention and maintain minimum standards for the maintenance of landfill sites, it seems likely therefore, import and export of waste is being handled in an environmentally acceptable manner. At this time, FCM would not support any action by the federal government to ban the import and export of non hazardous solid waste.

Other concerns which were raised in FCM's Brief to the House of Commons Standing Committee are unaddressed in the federal government's response to CEPA. These concerns relate to common industrial discharge standards, controls at the manufacturing process, and revenues from effluent discharge fees

I would be pleased to meet with you to discuss the municipal role in environmental protection.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'John Les', with a large loop at the end.

John Les
President

JL/kt:sd
Enclosure

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd-CDU LQE

MAY 20 1985

STATION-1480



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Colleen Flawn

Address: Box 703 Greenwood NS
B0P1N0



DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Meghan Flawn

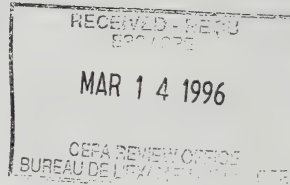
Address: 40 Maple st Greenwood

NS. Box 703 Bopino

Date: 3/13/96 10:48:55 PM
From: Philip Fleischer
Subject: the difficulty of public participation and CEPA

I have been having difficulties using both deed@ncr.dots.ca and deed@ncr.dots.doe.ca. One I know was good not too long ago because he sent me mail from there and the other was published as an address I could send to.

(Since I have been forwarding these messages around, I did hear from Miles Constable.)



MR-Received: by mta NCR3; Relayed; Wed, 13 Mar 1996 05:40:49 +0000
Alternate-recipient: prohibited
Disclose-recipients: prohibited
Date: Wed, 13 Mar 1996 05:37:00 +0000 (GMT)
From: mail postmaster <POSTMASTER@ncr.dots.doe.ca>
Subject: Delivery Failure Report
To: philip@coc.powell-river.bc.ca
MIME-version: 1.0
Posting-date: Wed, 13 Mar 1996 05:37:00 +0000 (GMT)
Importance: normal
Priority: normal
A1-type: MAIL
Hop-count: 1
Status:

ALL-IN-1 was unable to deliver your message dated to
DEED - no such ALL-IN-1 account
POSTMASTER - user cannot accept new mail
on node NCR3

The subject of the message was :
Re: Delivery Failure Report

[This is a resend, a previous transmission failed because of address errors, see above..... previous headers:
To: deed@ncr.dots.ca, wherryr@ncr.dots.ca, npri@cpits1.am.doe.ca
From: Philip Fleischer <philip@coc.powell-river.bc.ca>
Subject: Comment: Government Response to Standing Committee (CEPA)
Cc: wituscheke@epvan.dots.doe.ca, HAGENM@epvan.dots.doe.ca, tooker@web.apc.org, TDann@rr.etc.ncr.doe.ca, greenweb@fox.nstn.ca, hburke@achilles.net, aj688@freenet.carleton.ca, era@pinc.com, Stu.Beal@cciw.ca, alternatives.com@coc.powell-river.bc.ca, ab941@freenet.carleton.ca, glen@cymbiont.ca, jpalter@web.apc.org, davids@cyberstore.ca]

Duncan Dee
Office of the Minister of Environment

Ruth Wherry
Manager, CEPA Office

This letter is regards to a Renewed CEPA and the Government

Response to the Standing Committee and is a representation to the Government Response offered within 90 days of the publication of notice.

On page 24 section 3.1 three options are cited to ensure information is readily available to those outside government. The government's real disposition to public participation is such that, which, if any, of these three options is officially designated, will be of no consequence.

The experience we have had with NPRI and with federal officials having access to email shows very clearly that it has become technically easier to provide the access to information. But the frustration of people who have tried to comment, or seek more information, or do anything more meaningful than look at colourful web pages telling us to recycle our al cans tells another story.

At a deep level, the government is adverse to public participation.

I will illustrate this with some details but also try to remain brief. (I can cite further details if anyone is interested. I don't expect they will be.) It is not my intention to condemn or point the finger at any particular individual or individuals in any department. The problem is not so much in any individual as it is that a structure has evolved which effectively manages public participation.

I attempted to access information about a review of the Dow Chemical works in Fort Saskatchewan by sending email requests to several addresses which were presented as appropriate. Doing this for about a month I finally received the following message <3041CF4B@mail.edm.ab.doe.ca> on Mon, 28 Aug 95 07:59:00 MDT:

>Hi,
>I received an Email message on August 21 that you were looking for a contact
>within Environment Canada in the prairie provinces concerning toxic
>substances. I have been on leave since then. I am the Senior Toxic
>Substances Consultant working for Environment Canada in Edmonton. If you
>have a specific question please send me an Email message. Thank you.

>Miles Constable
>Senior Toxic Substances Consultant
>constablem@edm.ab.doe.ca

I replied by sending him several well formed and specific questions. I received no response. I sent my message again. Again no response.

I have since communicated this case to the Departments of Environment, Industry and others through various channels. I have only received one communication which might have been a response. It was from Lucien Bradet of Industry Canada and I refer to it with the 'might have been a response' because the entire content was so oblique as to make me wonder why I received it at all. And in any case, his 'remedy' was for me to contact the Regional Officer in Vancouver. Being bounced between different offices, or being asked to restate your case to another federal or provincial agency is only one facet of this 'structure

which has evolved to manage public participation'.

My experience is not unique. I have discussed this and other cases with many people in the environmental movement and elsewhere. Your techniques generally work. Most people do give up. But they do not forget and they are becoming more.

And it is not that employees of the departments do not have time to deal with email or whatever communication media. Some Environment Canada employees have the time to contribute to internet discussion groups. For example Michael Hagen was able to forward the essence of the leading recent industry mandated research (the 'dioxin is not so bad for you' view) from the Dioxin 95 conference in Edmonton, to the Citizens Clearinghouse for Hazardous Waste dioxin-I conference. Let me repeat that I do not wish to condemn any individuals in federal departments. I think it is OK for them to participate in such discussion, with whatever views they wish to present and defend, and I appreciate very much that Michael did correspond with me by email. That he was able to provide me with some information on pulp mill pollution was very positive. That he dropped the conversation when I brought up the Miles Constable and Dow Chemical case is simply an example of how Environment Canada's configuration is optimized to cause cases like that to be efficiently dropped through the cracks.

I find it ironic that on the next page, page 25, under the title of 'The Right to Request an Investigation', the question is asked about how would individuals other than those who work in a vinyl chloride plant know if instruments in the plants demonstrate unlawful releases. Having expended a great deal of energy seeking information about the Dow Vinyl Chloride plant in Fort Saskatchewan I have been unable to find anyone who might even define an unregulated release. It is apparent from page 9 of the IRR report for that facility that the rate of issue of dioxin from one of the vents at that plant is in the order of twenty times the rate which would be allowed for a municipal waste incinerator according to BC provincial standards or 100 times the rate which would be allowed for any facility in many European countries. It is also apparent from the fact that Environment requested such a study in the first case that there must have been a question or two about emission levels and health risks. But my question about what was or what is the question remains unanswered. To this day I do not know if there is a level of vinyl chloride, dioxin, or anything issued from that plant, which could be above, below or anywhere with respect to any CEPA regulation and I wonder if anyone who reads this would know either.

The decision of the government to not generally adopt pollution regulations of OECD countries is relevant to this case because vinyl chloride is a substance which the more environmentally advanced OECD countries have already begun to ban. (This is not just because of the toxicity of vinyl chloride but also because of the toxicity of dioxin and other substances entailed in the production and disposal of vinyl chloride.)

A PVC free product in global packaging arrived in our house recently. The capital letters PVC inside a circle with an oblique strike through are more common in Europe but can be seen on

Canadian supermarket shelves by the observant. The government loves to talk about globalization. They love to talk about saving money by avoiding duplication. Obviously another logic applies here. By ignoring the existing research on vinyl chloride, Canada can not only inflate its GNP with the research dollars and expenses of extending a toxicity debate but industry will turn over a few more dollars producing poisons for a few more years, and some facilities like the Dow Chemical plant in Fort Saskatchewan may even expand by offering to take up the toxic slack that the Europeans have decided is unhealthy.

That one OECD country might not automatically adopt OECD regulations for absolutely every substance could be understood. To review some of them, like the recent position of Sweden on vinyl chloride, and to offer publicly some detailed rationale for not acting similarly in Canada would be a good exercise.

Also, since this letter is addressed to Duncan Dee, I would like to mention another slip through cracks. I was told by Mr. Dee via email and by another Environment Canada employee over the phone that I would receive a copy of a summary/review of an OECD report on Canadian environmental compliance. It has been over a month that I have not received this. I would expect that this summary would have been produced on a computer and that transmitting it to me electronically should have been a matter of seconds and pennies (if that) but I do not think that time or money is the issue at all.

regards

Philip Fleischer

What if the documented declining learning performance and increasing incidence of problem behaviour in children are not functions of the educational system? What if they are a result of exposure to developmental toxicants that have been and are being released into the children's and parent's environment, or to which they have been exposed in utero? --International Joint Commission
(7th Biennial Report on Great Lakes Water Quality)

Philip Fleischer Philip@coc.Powell-River.BC.CA 604/483-4701

Honourable Sergio Marchi: MAR 15 1996

March 9, 1996

Comments on the Canadian ^{Regu-UCM-MDE} Environmental Protection Act: 38782

We need strong federal leadership to protect the environment, and CEPA is the way.

Legislation must prevent the manufacture and use of pollutants. There is no other way to reduce the hazards we are facing - hazards to our health and ecosystems.

The use, manufacture and discharge of persistent or bio-accumulative toxic substances must be eliminated. NO release of any toxic chemical into the environment should be allowed.

CEPA's definition of toxicity needs to be amended to reflect inherent characteristics of a toxic substance. The most stringent definition should be used. Place burden of proof on manufacturer or user to show the chemical is safe, and if in doubt, REGULATE. PROTECT THE ENVIRONMENT. That's what CEPA is supposed to do.

Concerns regarding the new field of biotechnology are justified, and CEPA should address the special risks that could arise, and develop policies to protect the environment.

There are multitudes of concerned, educated Canadians, experts in diverse fields, who could play a vital role in decisions regarding new chemicals and biotechnology products.

Since this is a democracy, citizens must have complete access to pertinent information and be able to participate in decisions affecting their lives. The public is an often-overlooked resource (re consultation).

Canada should be a leader in environmental protection - legislating and enforcing stringent standards to ensure Canadians a clean, healthy environment, and setting an example for other nations in the development and use of "clean technology".

Please respond to my concerns.

Sincerely,
Valerie Forest
19 High Park Dr.
Guelph, Ontario
N1G 2H6

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd - DCU - DOB

MAR 25 1996

Rec'd - UCM - MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Debra Fougère Debra Fougère

Address:

Box 373 Kingston

Nova Scotia

BOP #RO

Dear Honourable Sergio Marchi:

I am a Canadian who wants to stop all toxic pollutants from entering our air, soil, and water.

The Liberal Party committed itself in its policy statements outlined in the 'Red Book' "to make pollution prevention a national goal and to strengthen the enforcement of federal pollution standards". The government response to the Standing Committee's Report on the CEPA Revisited falls far short of accomplishing this. Major disappointments include

the failure to:

- ▶ legislate the phase out of all toxic chemicals
- ▶ require industry to develop plans to avoid the use of toxic chemicals
- ▶ regulate biotechnology and legislate the mandatory labelling of it's products
- ▶ give citizens public participation and effective rights to sue polluters who break environmental laws
- ▶ implement strong measures to protect biodiversity

For real sustainable development to work, uncompromising commitment must be made through the CEPA to ensure that we protect our environment and the biodiversity of our planet.

Ann Isaac
RR 2 Site 6
Junction N.S.
Box 190
Pictou Landing First Nations

Dear Honourable Sergio Marchi:

I am a Canadian who wants to stop all toxic pollutants from entering our air, soil, and water.

138587

The Liberal Party committed itself in its policy statements outlined in the 'Red Book' "to make pollution prevention a national goal and to strengthen the enforcement of federal pollution standards". The government response to the Standing Committee's Report on the CEPA Revisited falls far short of accomplishing this. Major disappointments include

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- ▶ give citizens public participation and effective rights to sue polluters who break environmental laws
- ▶ implement strong measures to protect biodiversity

Rec'd - DCU - DOE

MAR 8 1991

Regu - UCM - MDE

For real sustainable development to work, uncompromising commitment must be made through the CEPA to ensure that we protect our environment and the biodiversity of our planet.

Robert D. Francis
Peter T. B...

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Peter Freeman

Address:

Margaretville

BOS 1 NO,

Friends of Lily Lake
Box 249
Bon Accord, Alberta TOA OKO
March 19, 1996

139122

Rec'd - DCU - DOE

MAR 28 1996

The Honourable Sergio Marchi
Minister of the Environment
Terrasses de la Chaudiere
10 Wellington Street
Hull, P.Q. K1A 0H3

Requ - UCM - MDE

0-1025-31

Dear Mr. Marchi:

RE: Our comments on the federal government's proposed changes to CEPA

Please consider this our submission for public input into the Canadian Environmental Protection Act. We have participated in this legislation from its onset and we are disturbed that many of the 141 recommendations of the Standing Committee on Environment to increase the role of the federal government to protect the health of Canadians and the environment of Canada were not proclaimed as part of CEPA. The federal government needs to adopt a more aggressive plan to protect Canada's ecosystems through all levels of government, industry, research and development, health and population. Your report entitled, "Environmental Protection Legislation Designed for the Future - A Renewed CEPA, released December 15, 1995, does not reflect the findings of the Standing Committee or the feelings of Canadians. As a group of THESE Canadians we are again reiterating our thoughts and feelings:

1. The federal government should take a leadership role in protection of the environment. Onus for protection of ecosystems cannot be left to the provinces. We understand there should not be duplication in assessments, etc. but harmonization with provincial environmental departments cannot take the ultimate power of protection of the environment through strong environmental standards away from the central government.
2. The use, release, landfill and disposal of chemicals which accumulate in the soil, water, air and tissues of plants, animals and humans should be banned. The continuing poisoning of the Saint Lawrence River/Great Lakes by industry is a prime example of what happens to an environment that is overbalanced by toxins. The Beluga whales which inhabit the St. Lawrence River are gross aberrations of accumulated toxins in tumour and lesion riddled bodies. They must be disposed of as toxic waste when they succumb to death. Yet the offending polluting industries continue to pour deadly chemicals into these waters daily with little or no repercussions. The onus must be on companies introducing new chemicals for the market to prove beyond a shadow of a doubt that their use will not harm earth's ecosystem.

We have enclosed a copy of an article from Redbook, August, 1995, which vividly describes what can happen to innocent people when individuals and companies have no standards to follow regarding disposal of toxic chemicals.

3. Canadians need an Environmental Bill of Rights so that individuals may intervene when the environment is being destroyed and sue polluters who break the law.

4. Canadians should have comprehensive public access to information so we can find out what, where, when, why and how toxic chemicals are being released, landfilled, recycled and incinerated.

5. Regulation of biotechnology must be a priority. CEPA must include a section which applies to all biotechnology products.

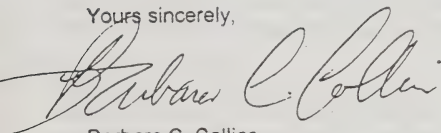
6. CEPA must include provisions which require all sectors of society to prevent the use and production of pollutants and toxic substances. Controlling them is not enough. Even the Arctic, hitherto considered pristine, has been contaminated by air-borne toxins.

7. A section spelling out unequivocal protection for endangered plants and animals and their habitats must be included in this Act. This is the only way we can preserve biodiversity and prevent extinction of species. This cannot be left to the provinces. Presently 243 species are listed as endangered, threatened, or vulnerable in Canada. Twenty have already disappeared. Every hour 240 acres of wildlife habitat is paved, flooded, drained or clearcut in Canada.

8. Priority protection must be given to our water supply: that means protection of watersheds, wetlands, lake and river ecosystems from environmental degradation, pollution, and destruction. Protection of our water supply means protection of Canadians' health. We cannot live or produce food without adequate supplies of water. Water IS LIFE to humans, plants and all other animal species.

The Canadian Environmental Protection Act must have the teeth to protect human health and safety and the environment. Right now it does not have the tools to do so. Canadians spoke to the Standing Committee about their collective desire to protect the environment; the Committee responded with 141 recommendations. Now your government must have the gumption to enact the required legislation to achieve this protection.

Yours sincerely,



Barbara C. Collier
Spokesperson
Friends of Lily Lake

Enc. ✓



FRIENDS OF NATURE
CONSERVATION SOCIETY

Rec'd-DCU-DOE

MAR 12 1996

CHESTER,

PO Box 281

NOVA SCOTIA,

B0J 1J0

CANADA

Telephone: 902-275-3361

Martin R. Haase, Executive Secretary

Reçu-UCM-MDE

29 February 1996

0-1025-

Hon. Sergio Marchi
Minister of the Environment
House of Commons
Ottawa

38682

Dear Mr. Marchi:

Congratulations on being appointed Minister of the Environment. This could be the most important portfolio in the federal cabinet because the protection of the environment is fundamental to our survival. The next few years will be crucial in implementing - and carrying out - programs which will sustain life on this planet.

Of immediate high priority is the enactment of a strong Canadian Environmental Protection Act. The Standing Committee on Environment and Sustainable Development, after many hearings and much study, came up with excellent recommendations, but shockingly, these have not been accepted, but have been watered down or eliminated by industry lobbying. We are counting on you to restore the strong features of an effective CEPA. This is your first mandate, and failure to see a strong CEPA enacted into law will be a blot on your department and the Liberal government.

It is important that the CEPA, among other things, legislate the elimination of toxic chemicals, legislate the labelling of all consumer products including those of biotechnology, prevent the introduction of Bovine Growth Hormone, phase out the use of Chlorine, stop the use of herbicides and pesticides in agriculture and forestry, stop the increase in global warming, and give citizens the right to sue polluters who break environmental laws.

Sincerely yours,

M. R. Haase
Martin R. Haase

Executive Secretary

CC: Hon. Sheilla Copps
Hon. David Dingwall
Hon. Charles Caccia
Mr. Derek Wells

Dept. Resp.

LES AMI(E)S
DE LA TERREFRIENDS OF
THE EARTHRECEIVED
MINISTER OF
THE ENVIRONMENT

MAR 26 11 50 AM '96

139227

Member of Friends of the Earth International / Membre du Réseau international des Amis de la Terre

March 22, 1996

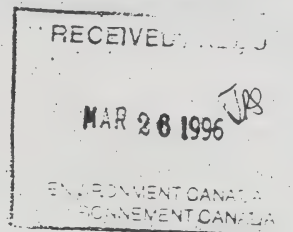
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0-1025-1

The Honourable Sergio Marchi
Minister of the Environment
Room 507,
House of Commons
Ottawa, Ontario
K1A 0A6

Rec'd-DCU-DOE

MAR 1 1996

Requ-UCM-MOE



Dear Minister:

Friends of the Earth Canada is writing to you to underline our belief that the federal government must take a stronger leadership role in environmental protection. This can be achieved, FoE believes, by establishing strong environmental standards.

A particularly urgent case relates to the use and release of chemicals which have been shown to persist in the environment and to build up in wildlife and human bodies. Toxins must be banned since humans, animals and the environment cannot tolerate these insidious substances.

We urge your government to take immediate action to create an Environmental Bill of Rights which would protect Canadians and which would include the right to intervene when the environment is being harmed. Any Bill must build into it the right of Canadians to sue any polluters who contravene the Bill!

This Bill must also guarantee Canadians the right to know what companies are releasing pollutants into the environment. It must contain the right to comprehensive access to information, including all toxic releases into the environment and, just as important, substances sent off-site for recycling and/or incineration.

The protection of human health, safety and the environment must be a priority in your government's regulation of biotechnology. It is imperative that a new section on all biotechnology products, which enter the environment, be added to CEPA.

- 2 -

Administration of this should be overseen by Health Canada and/or Environment Canada. Further, it is clear that new provisions must be enacted so that they will clearly require all sectors of society to prevent the use and generation of pollutants.

It is only by taking such measures that Canadians can rest assured that their duly elected officials are protecting the environment in which we all live.

Yours sincerely,



Blaine Marchand

Director of Communications

RECEIVED
MINISTER OF
THE ENVIRONMENT

Friends of the Farewell

MAR 22 8 15 AM '96

3200 Hancock Rd.,

Courtice, Ontario L1E 2M1

Phone: (905) 436-2376 Fax: (905) 837-6680

48960

March 21, 1996

The Hon. Sergio Marchi
Minister of the Environment/Terrasses de la Chaudière
10 Wellington St
Hull, PQ K1A 0H3

Rec'd-DCU-DOE

Dear Sir:

MAR 25 1996

This letter is related to the CEPA Review, and more generally the importance of environmental protection.

Rec'd-UCM-MDE

The Environmental Bill of Rights is a requirement for the Canadian public. The right to intervene, and sue polluters, is one of the important aspects of this. It should be all of our rights and responsibilities to protect the environment any way we can. As a part of this, we require access to information on polluters.

The focus on pollution should be to prevent the use and generation of pollution rather than merely attempting to control it. It is important that our government take a strong stand on this, and set a leadership example in environmental protection. The use and release of chemicals into the environment is harmful to humans and wildlife, and this is something that physically cannot continue to be tolerated, and ethically should not be tolerated. It is the responsibility of the government to protect its citizens, and part of this protection includes providing a safe, clean environment for us. The only way to achieve this is to set regulations and tough standards to phase out the use of dangerous chemicals, and any biotechnological products. Our world should not be used as an experimental lab, where the public becomes the guinea pig to chemical and biotechnological producers who constantly produce "safe" products which only too late, after disastrous consequences, are labelled as dangerous.

Whether it is in external pollution generation or the use of products in what eventually becomes consumed internally, our government must stand firm and ensure a safe environment for us all.

As a final note on environmental protection, please remember we have to make certain that there even exists an environment for us to protect, so please, let us maintain what we have left and treat it with respect before it will be too late.

Yours sincerely,

Elena Racansky

MAR 21 1996

Regu-UCM-MDE

03/14/96

Sergio Marchi,

138879

I write you with a deep concern for environmental protection and human health in Canada. I understand that the Federal government has proposed reforms to the Canadian Environmental Protection Act.

I plea that you make the Canadian Environmental Protection Act worthy of its name and include the following reforms:

- the Federal government should take a strong leadership role in environmental protection by setting strong environmental standards;
- the use of persistent chemicals should be banned, since neither humans, nor the environment can tolerate these substances;
- the Canadian public should have and need an Environmental Bill of Rights, which include the right to intervene when the environment is being harmed and the right to sue polluters who break the law;
- the Canadian public needs the right to know who is releasing which pollutants into the environment through comprehensive public access to information that includes all toxins released into the environment, including substances sent off-site for recycling or incineration;
- new provisions must be enacted to require all sectors of society to prevent the use and generation of pollutants rather than to control them and;

→ the protection of human health, safety and the environment should be the priority of the government in the regulation of biotechnology. A new section should be added to CEPA, to be administered by Health Canada and Environment Canada, which applies to all biotechnology products which may enter the environment.

The environment should be the government's number one priority. Without a healthy and sustainable environment there's no future here. Canada is weak and grows weaker. I will not sit and watch the degradation of this land, this earth, and many Canadians feel this way.

Sincerely,

April Gates

RR#5

Rockwood, Ont

N0B 2K0

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd - DCU - DOE

MAR 25 1986

Regu - UCM - MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

MR. DAVID W. GAUDET

Address:

RR#3 Middleton, NS

Bos 1P0

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd-DCU-DOE

MAR 22 1996

Recu-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Michael J. Gaudet (Michael J. Gaudet)

Address: R.R.#3 Middleton

Nova Scotia

B0S 1P0

The Hon. Sergio Marchi
Minister of the Environment
House of Commons
Ottawa, Ont.
K1A 0A6

Rec'd-DCU-DOE

MAR 7 1996

Rec'd-UCM-MDE

Deborah German
RR#1 Box 33A
Saulnierville, Nova Scotia
Bow 220

0-10257
0-116536/515
38558

Dear Minister Marchi,

I hope very much that the government will act on the Standing Committee on Environment and Sustainable Development's recommendations to improve the Canadian Environmental Protection Act.

According to my information, the Liberal Party committed itself in its red book to make the CEPA a more meaningful act. Apparently the proposed legislation falls far short of accomplishing this.

Major disappointments include the following: A failure to:

- * legislate the phase-out of all persistent toxic chemicals
- * require industry to develop plans to avoid the use of dangerous chemicals
- * regulate biotechnology
- * give citizens public participation rights and effective rights to sue polluters who break environmental laws
- * provide for improved coastal zone management.
- * implement measures to protect biodiversity

I am not an expert, but I know enough to know that current legislation is woefully inadequate. Agriculture Canada has banned some toxic chemicals as active ingredients but these can still be used in pesticides and their use can be kept secret because companies claim they are "trade secrets". Many people have become "environmentally sensitive". I see these people as the "canaries" of our population. Their bodies are reacting more quickly than most to the poisons we have allowed to be used and dumped in our food and environment. These people can improve their condition by avoiding the food most of us eat and by buying only organic food. It's obvious that we should work to make sure that all of the population is not exposed to contaminated food, water and environments.

I recognize that it would be tempting for governments not to effectively regulate biotechnology. Governments are generally eager for Canadian industry to find new products to sell on the world market. Biotechnology represents one possibility for new products. But exploiting biotechnology ^{without adequate safeguards} will not be good for Canadians or their country. BCH is a good example of a lucrative product of biotechnology that we should avoid.

Canada committed itself at the Earth Summit to protect biodiversity. It is a shameful disappointment that proposed biodiversity legislation is inadequate. Canada continues to allow logging and fishing technologies that destroy species while other countries, in Europe for instance, have, in some cases, improved their technologies. These countries are in a position to sell us their improved technologies (in forestry especially). We should change the way we harvest fish now and later we may be in a position to sell our technology elsewhere. Even if we never sell any environmental technology, we would benefit not only environmentally but economically from requiring the use of less damaging and more labour-intensive methods of logging and fishing.

Please reply to my letter soon, stating what you will do to ensure that Canada improve its scorecard on CEPA.

Sincerely, Deborah German

Rec'd-DCU-DOE

MAR 22 1996

138922

Rec'd-UCM-MDE

Adele Gibson
677 Balaton Ave
Pickering, Ontario L1W 1W2

The Honourable Sergio Marchi
Minister of the Environment
Terrasses de la Chaudière
10 Wellington St,
Hull, Quebec, K1A 0H3

0-1025-1

RE:Public comment on the Environmental Protection Act

Dear Mr. Marchi:

The time has come to address a number of environmental issues. Issues related to water and air quality, depletion of natural resources, leachate contamination of the ground water, dumping of waste materials in our oceans, pesticide use, radio-active leaks only to name a few.

The Sixth Biennial Report of the International Joint Commission asked for immediate action of the United States government and the government of Ontario to achieve zero discharge of 12 persistent toxic chemicals which include lead, mercury, and 8 chlorinated chemicals. Even today with mounting evidence about the impact on human and wildlife populations little has been done. The government of Canada should adopt strong policies will regards to persistent toxic chemicals.

The above mentioned chemicals are only a few of the thousands of chemicals that have been and still are being intentionally or unintentionally released into the biosphere daily.

These chemicals have been linked to a number of diseases and disorders, such as reproductive failure, decreased birth weight and head circumference in newborns, behavioral problems, thyroid dysfunction, ozone depletion, breast, skin, prostate and bladder cancers, suppression of the immune system, increased incidence of cataracts, and a host of other illnesses.

As a society we have been led to believe and trust that the indiscriminate usage of these easily obtainable chemicals would cause no harm to ourselves or our offspring. In order to protect human health and the diverse ecosystem that we are dependent upon a new section should be added to the CEPA that would be administered by Health Canada and Environment Canada. This section would apply to all biotechnology products that may enter the environment.

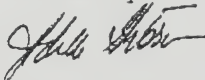
Canadians believe that they would be protected from companies when they advertised and recommended the use of thousands of these chemicals including DDT, CFC's, PCB's, lead in paints and gasoline, only to find out later their deadly and crippling effects. We have allowed the unintentional production of dioxin and furan to be created in the manufacturing process and by the incineration waste.

I have found that when inquiring about a process or the effects of a particular chemical a shroud of secrecy prevails. It is every Canadian citizen right to know the potential dangers and to have access to accurate information in a timely manner. A life cycle analysis providing detailed information which includes the names of stakeholders should be made public knowledge and available without monetary burden to those inquiring.

By introducing an Environmental Bill of Rights, we would be able to pursue those whose actions have negatively impacted our right to a clean and pollution free environment. The time has come that individuals and companies who have violated this right must be made accountable and responsible for their actions.

In closing, we must have a comprehensive, strictly regulated and operational environmental plan that will safeguard us and future generations from the errors made in the past.

Sincerely



Adele Gibson

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd - DCU - DOE
MAR 22 1996
REC'D - LICM - MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Cheryl Hillis

Address:

R.R. #1

MARGARETSVILLE, N.S.

B0S 1N0

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd - DCU - DOE

MAR 25 1996

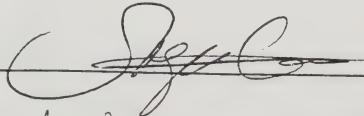
Rec'd - UCM - MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Stephane Gingras 

Address:

600 Guy Apt 3 Montreal Quebec

H3J 1T3

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: DOUGLAS N. GOOK FORPA FOREST PROTECTION ALLIES

Address: Box 4321

QUESNEL B.C. V2J 3J3

PHONE/FAX (604) 747-3363

Rec'd-DCU-DOE

MAR 11 1996

Requ-UCM-MDE

The Hon. Sergio Marchi
Minister of the Environment
House of Commons
Ottawa, Ont.
K1A 0A6

0-1025-1
0-1165-36/S15

138624

Dear Minister Marchi,

I hope very much that the government will act on the Standing Committee on Environment and Sustainable Development's recommendations to improve the Canadian Environmental Protection Act.

According to my information, the Liberal Party committed itself in its red book to make the CEPA a more meaningful act. Apparently the proposed legislation falls far short of accomplishing this.

Major disappointments include the following: A failure to:

- * legislate the phase-out of all persistent toxic chemicals
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- * regulate biotechnology
- * give citizens public participation rights and effective rights to sue polluters who break environmental laws
- * provide for improved coastal zone management.
- * implement measures to protect biodiversity

I am not an expert, but I know enough to know that current legislation is woefully inadequate. Agriculture Canada has banned some toxic chemicals as active ingredients but these can still be used in pesticides and their use can be kept secret because companies claim they are "trade secrets". Many people have become "environmentally sensitive". I see these people as the "canaries" of our population. Their bodies are reacting more quickly than most to the poisons we have allowed to be used and dumped in our food and environment. These people can improve their condition by avoiding the food most of us eat and by buying only organic food. It's obvious that we should work to make sure that all of the population is not exposed to contaminated food, water and environments.

I recognize that it would be tempting for governments not to effectively regulate biotechnology. Governments are generally eager for Canadian industry to find new products to sell on the world market. Biotechnology represents one possibility for new products. But exploiting biotechnology will not be good for Canadians or their country. BGH is a good example of a lucrative product of biotechnology that we should avoid.

Canada committed itself at the Earth Summit to protect biodiversity. It is a shameful disappointment that proposed biodiversity legislation is inadequate. Canada continues to allow logging and fishing technologies that destroy species while other countries, in Europe for instance, have, in some cases, improved their technologies. These countries are in a position to sell us their improved technologies (in forestry especially). We should change the way we harvest fish now and later we may be in a position to sell our technology elsewhere. Even if we never sell any environmental technology, we would benefit not only environmentally but economically from requiring the use of less damaging and more labour-intensive methods of logging and fishing.

Please reply to my letter soon, stating what you will do to ensure that Canada improve its scorecard on CEPA.

Sincerely,

Wendy Gordish

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



Rec'd DCU-DOE
MAY 22 1996
UIC-MEE

I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Christine Young

Address: Box 1443

Middleton NS

B0S 1P0

139021

156 St. Patrick St., #3
Ottawa, Ontario
K1N 5J8

Rec'd - DCU - DOE

MAR 26 1996

Regu - UCM - MDE

0-1025-1
0-1165-36/S15

Rt. Honourable Jean Chretien
Prime Minister
Langevin Block
80 Wellington St.
Ottawa, K1A 0A2

March 20, 1996

Dear Mr. Chretien,

I am writing to express my concern for human health and environmental protection in Canada - and the disappointing reforms proposed to the Canadian Environmental Protection Act.

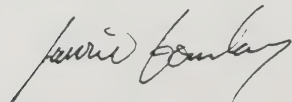
Canada should be a leader in setting global standards. We know enough about the costs of pollution and chemical and toxic contamination that prevention should be an absolute requirement, that the public should have the right to defend themselves in courts by suing polluters who break the law.

Canadians should have an Environmental Bill of Rights which allows us to intervene when the environment is being threatened. And along with the profits we envision from biotechnology we need adequate safeguards for the protection of human health, safety and the environment.

I ask you to act on behalf of Canadians and future generations by taking a second look at CEPA, and ensuring that such concerns are specifically and fundamentally assured before passing this legislation.

Your support for Canadians and our shared environment will pay dividends. Please give your serious consideration to these matters.

Sincerely,



Laurie Gourlay

cc. Hon. Sergio Marchi

Dept. resp.



grande ruche

marché d'aliments et de produits naturels

un choix
naturel

RECEIVED
MINISTER OF
THE ENVIRONMENT

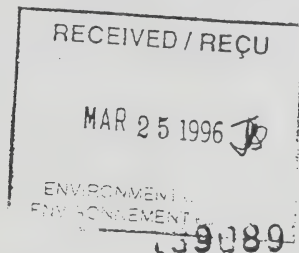
Sherbrooke, le 22 mars 1996. 0-1025-1
MAR 25 8 48 AM '96
0-1165-36/SIS

Honorable Sergio Marchi
Ministre de l'Environnement
Terrasses de la Chaudière
10, rue Wellington
Ottawa (Québec)
K1A 0H3

Rec'd-DCU-DOE

MAR 27 1996

Recu-UCM-MDE



Monsieur Marchi,

La présente lettre porte sur les propositions gouvernementales de règlements en matière de biotechnologie publiées en décembre 1995 en réponse au rapport du Comité permanent de la Chambre des Communes sur l'environnement et le développement durable: Notre santé en dépend!, déposé en juin 1995.

Nous voulons vous faire part de notre profonde inquiétude devant l'attitude du gouvernement qui se propose d'affaiblir considérablement la portée de l'actuelle LCPE en matière de biotechnologie, lorsqu'il affirme vouloir éliminer les normes minimales établies par la LCPE dans sa version actuelle pour la notification et l'évaluation de la toxicité de tous les produits de la biotechnologie.

Une telle proposition va à l'encontre des recommandations du Comité permanent quant à la réglementation de la biotechnologie en vertu de la LCPE et pourrait mettre en péril la santé, la sécurité et l'environnement des Canadiennes et des Canadiens. Il faut la rejeter.

En remplacement et en accord avec les recommandations du Comité permanent, nous recommandons d'ajouter à la LCPE une nouvelle partie sur la biotechnologie. Celle-ci devrait:

s'appliquer à tous les produits de la biotechnologie qui pourraient pénétrer dans l'environnement et inclurait, par conséquent, les produits que le gouvernement propose de réglementer en vertu d'autres lois fédérales, notamment la Loi sur les semences, la Loi sur les produits antiparasitaires et la Loi sur les engrais;

spécifier des exigences pour l'évaluation des produits de la biotechnologie en fonction de:

- leurs répercussions potentielles immédiates ou à long terme, directes ou indirectes, sur la vie et la santé humaines, l'environnement et la biodiversité, incluant leurs effets cumulatifs;
- l'efficacité potentielle des produits quant à leurs fonctions prévues;
- la disponibilité de solutions de rechange qui permettent de réaliser les fonctions prévues pour les produits mais qui supposent un potentiel de nocivité moindre pour l'environnement



grande ruche
marché d'aliments et de produits naturels

*un choix
naturel*

et la santé humaine;

encourager la participation du public à l'élaboration de décisions en matière de biotechnologie par l'application des mesures qui suivent:

- la publication d'avis publics sur les décisions majeures ayant trait aux produits de la biotechnologie;
- des avis publics pour les essais dans l'environnement libre de produits biotechnologiques;
- la possibilité de porter en appel les décisions gouvernementales ayant trait aux produits de la biotechnologie, notamment les essais dans l'environnement libre;
- un meilleur accès à l'information sur les produits de la biotechnologie;

créer un système de recouvrement total des coûts auprès de l'utilisateur, pour les demandes d'approbation de produits de la biotechnologie;

créer une base de données sur les rejets dans l'environnement de produits de la biotechnologie canadienne.

Le gouvernement fédéral devrait agir comme chef de file de la protection de l'environnement et, par conséquent, établir des normes écologiques strictes.

Il faudrait abolir ou réduire l'utilisation et le rejet de produits chimiques qui persistent dans l'environnement et s'accumulent dans la nature.

Le public canadien a besoin d'une Déclaration des droits écologiques qui comporte le droit à intervenir dans les cas où l'on endommage l'environnement ainsi que le droit à poursuivre en justice les pollueurs qui contreviennent à la loi.

Le public canadien devrait avoir le droit de connaître l'identité de ceux qui déversent des substances polluantes et toxiques dans l'environnement, notamment des substances qui sont acheminées au recyclage et à l'incinération, hors de l'endroit où ils sont produits.

En espérant que vous tiendrez compte des préoccupations des plus de deux mille membres que nous représentons. Veuillez agréer l'expression de nos salutations les plus distinguées.

Roger Lemay
Président de la Coopérative
d'alimentation naturelle de Sherbrooke

GREAT LAKES UNITED

An international coalition to conserve and protect the
Great Lakes/St. Lawrence River ecosystem

38348

February 20, 1996

Rec'd-DCU-DOE

The Hon. Sergio Marchi
Minister of the Environment
Terrasses de la Chaudière
10 Wellington Street
Hull, Québec
K1A 0H3

FEB 22 1996

Reçu-UCM-MDE

0-1025-1
2-7340-85/6115

Dear Minister Marchi:

I am writing you to express Great Lakes United's considerable disappointment with the government's proposal for reforms to the Canadian Environmental Protection Act (CEPA). Your predecessor, the Hon. Sheila Copps, released the government's response to the report by Standing Committee on Environment and Sustainable Development on December 15, 1995. While Great Lakes United has many concerns with the government's proposals, I will focus primarily on the issue of toxic substances and their regulation.

Your Department recently released a report entitled *Industrial Releases Within the Great Lakes Basin: An Evaluation of NPRI and TRI Data*. We congratulated the Department for its excellent work in preparing the report which, for the first time ever, attempts to quantify the amount of toxins released into the Great Lakes. The report shows that over 380 million pounds of toxins are released into the Great Lakes. Canadian sources contribute 111 million pounds. Will a new Canadian Environmental Protection Act guided by the government's proposal eliminate this pollution? Unlikely.

In the government's response, there is no clear commitment to phase-out persistent toxic substances, or reduce toxic discharges in toxic amounts. There are no timelines or targets. The government's proposal does not call for mandatory pollution prevention planning for all toxic or hazardous substances.

This is despite mounting evidence that environmental exposure to toxins is contributing to rising rates of disease. Consider:

- in a study of children born to mothers who ate as few as two Lake Michigan fish meals per month, researchers found that the mothers delivered children with smaller heads, who

...2

ST-LAURENT, GRANDS LACS UNIS

Une coalition internationale vouée à la protection et la conservation de l'écosystème des Grands Lacs et du fleuve St-Laurent

in Office (Buffalo)

Buffalo State College, Cassery Hall

6 Elmwood Ave., Buffalo, NY 14222

(6) 886-0142, Fax: (716) 886-0303

Montréal

2360 rue Notre Dame O. #307

Montréal, Québec H3J 1N4

(514) 933-2262, Fax: (514) 931-1926

Ann Arbor

P.O. Box 3040

Ann Arbor, MI 48106-3040

(313) 998-0760, Fax: (313) 998-0821

E-Mail

glu@igc.apc.org

weighed less, and were born earlier than children of women from the same communities who did not eat Lake Michigan fish. At seven months old, the babies scored poorly on visual memory tests, a result consistent with neurological impairment and learning retardation seen in laboratory mice exposed *in utero* to PCBs. At age 4, the children lagged behind on measures of short-term memory, attention span, and mental processing of visual images. The degree of deficit was directly related to the amount of PCBs measured in the umbilical cord blood. A similar study of women who ate Lake Ontario fish has found behavioral anomalies in the most exposed children. This study, by researchers at SUNY Oswego in New York State, will be published shortly.

- a woman's lifetime risk of developing breast cancer is now 1 in 8. That number has increased from 1 in 20 in 1960. In 1980, more than 1/2 million women worldwide died of breast cancer. By the year 2000, this number is expected to double to one million.
- rates of childhood asthma are increasing. Between 1982 and 1992, the overall prevalence for asthma has increased 41 percent.
- sperm counts have declined by as much as half in men living in industrialized countries over the last several generations. The average human male produces only 2 to 4 times as much sperm as is needed for fertility. The average volume of sperm has also diminished, down by 20% since 1940.
- the incidence of cancer of the testicles has increased 3 to 4 fold in the last 40 years;
- several birth defects of the male reproductive system have increased 2 to 4 fold during the same period, including undescended testicles (cryptorchidism) and a birth defect called hypospadias in which the male urinary canal is open for a variable distance on the underside of the penis. In an article in the prestigious British medical journal *The Lancet*, the authors suggest that these male reproductive system disorders may be related to the same cause, namely, the exposure of males during development to female sex hormones or to environmental chemicals that act like hormones.
- a study published by the U.S. National Center for Health Statistics supports evidence of a rise in the number of women with endometriosis. The study found a 250% increase in the number of women aged 15 to 44 getting a hysterectomy as a result of endometriosis. Endometriosis has been linked to exposure to dioxin.

Given this mounting evidence, it is your responsibility as Minister of the Environment to ensure that a new Canadian Environmental Protection Act contains at least the following components:


- all persistent, toxic substances will be phased-out over the next 20 years;
- all toxic releases in toxic amounts will be prohibited over the next ten years; and
- all facilities releasing toxins will be required to develop and implement pollution prevention plans.

These three recommendations are further detailed in a submission to you by the Toxics Caucus of the Canadian Environmental Network.

Mr. Marchi, you live in the Great Lakes basin. You and your family have been exposed to unhealthy levels of toxins. Please ensure that a new CEPA will prevent future generations from unwantingly receiving similar doses of toxins.

I look forward to hearing from you.

Sincerely,



Burkhard Mausberg
Executive Director

cc. The Right Hon. Jean Chrétien, Prime Minister
The Hon. Sheila Copps, Deputy Prime Minister
The Hon. David Dingwall, Minister of Health
The Hon. Paul Martin, Minister of Finance
The Hon. Ralph Goodale, Minister of Agriculture and Agri-Food
The Hon. John Manley, Minister of Industry
Charles Caccia, M.P., Chair of the Standing Committee on Environment and Sustainable Development
Karen Kraft Sloan, M.P., Vice-Chair of the Environment and Sustainable Development Committee
Monique Guay, M.P., Vice-Chair of the Environment and Sustainable Development Committee
Clifford Lincoln, M.P., Member, Standing Committee on Environment and Sustainable Development
Peter Adams, M.P., Member, Standing Committee on Environment and Sustainable Development
Paul De Villers, M.P., Member, Standing Committee on Environment and Sustainable Development
John Finlay, M.P., Member, Standing Committee on Environment and Sustainable Development
Paul E. Forseth, M.P., Member, Standing Committee on Environment and Sustainable Development
Bill Gilmour, M.P., Member, Standing Committee on Environment and Sustainable Development
Pat O'Brien, M.P., Member, Standing Committee on Environment and Sustainable Development
Roger Pomerleau, M.P., Member, Standing Committee on Environment and Sustainable Development
Jim Abbott, M.P. for Kootenay East
Len Taylor, M.P. for The Battlefords - Meadow Lake
Craig Bolijkovac, Consultation Coordinator, Canadian Environmental Network
Paul Muldoon, Chair, Toxics Caucus of the Canadian Environmental Network

Green Alternatives Institute of Alberta

Rec'd-DCU-DOE

MAR 27 1996

Regu-UCM-MDE

401, 620 - 10 St. NW
Calgary, Alberta T2N 1W3
(403) 270-2604
Fax: (403) 270-2604

March 21, 1996

139084

The Honourable Sergio Marchi, Minister of the Environment
Terrasses de la Chaudiere
10 Wellington St.
Hull, PQ K1A 0H3

0-1025-1/
0-1165-36/5157

Dear Sir,

I am writing to you regarding the proposed changes to the Canadian Environmental Protection Act (CEPA). It is our view, that the government's primary responsibility to look after the public good demands that it aggressively preserve and protect the environment, not only in the short term but also for the benefit of future generations. We are concerned that the proposed changes to the CEPA represent the government's abdication of its responsibility to the Canadian public.

The review of the CEPA is an opportunity for the federal government to take a strong leadership role, in Canada as well as Internationally, on environmental protection by setting and enforcing thorough and strong environmental protection standards.

With the growing body of scientific evidence that is linking persistent toxic chemical pollution with the increase incidences of breast cancer in woman, testicular and prostate cancers in man, a world wide reduction in sperm count and numerous other health problems, it is time to take strong measures to phase out and ban the use of all persistent toxic chemicals. Without strong action we are in dangar of creating a severe health and environmental crisis that may well linger for a number of generations to come.

The Honourable Sergio Marchi, Minister of the Environment

Page 2

March 21, 1996

In these days of government downsizing it is becoming increasingly important to give the public the tools necessary for them to take an active role in environmental protection. The Environmental Bill of Rights is one of the most important steps that the government could take. The Bill gives the public the right to directly sue those who are responsible for pollution. Another important tool is the public right to know what pollutants are released into the environment and by whom.

Finally, adopting the preventive principles, where it is the polluters responsibility to prove that their waste is benign, and moving away from controlling pollution toward prevention, is a necessary and important steps to responsible and effective environmental protection.

Sincerely,

A handwritten signature in dark ink, appearing to read 'P. Abramowicz', written in a cursive style.

Peter Abramowicz
Toxic Coordinator

Cc: The Right Honourable Jean Chretien, Prime Minister
Canadian Environmental Network, Toxic Caucus

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd-DCU-DOE
MAR 22 1996
Regu-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Dallas Green

Address: 43 Colbourne St W

Lindsay, ON

K9V 3T1



GRIP QUÉBEC

L'UNIVERSITÉ DE MONTRÉAL

Montreal, March 22 1996

The Honourable Sergio Marchi
Minister of the Environment
Terrasses de la Chaudière
10 Wellington st.
Hull, Québec
K1A 0H3

0-1025-1
0-1165-36/S15.7

Minister Marchi,

Members of our organisation are concerned by the proposed reforms to the Canadian Environmental Protection Act (CEPA) and we would like you to consider the following point before making any premature modifications:

- the federal government should take a strong leadership role in environmental protection by setting strong environmental standards;
- the use and release of chemicals that persist in the environment and build up in wildlife and humans should be banned or phased out, since neither humans nor the environment can tolerate these substances;
- the Canadian public needs an Environmental Bill of Rights, which includes the right to intervene when the environment is being harmed and the right to sue polluters who break the law;
- the Canadian public should also have the right to know who is releasing which pollutants into the environment through comprehensive public access to information that includes all toxic releases to the environment, including substances sent off-site for recycling or incineration;
- the protection of human health, safety and the environment should be the priority of the government in the regulation of biotechnology. A new section should be added to CEPA, to be administered by Health Canada and Environment Canada, which applies to all biotechnology products which may enter the environment; and
- new provisions must be enacted to require all sectors of society to prevent the use and generation of pollutants rather than to control them.

We hope those few points will help in orienting policies regarding our environment.

Environmentally yours,

Steven Guilbeault
Activities Coordinator

SG/mm

DEAR HONOURABLE DAVE DINGWALL

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Received
2001-04-10
Rouge-Vert-Air



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Zacharia E Gubbins

Address: P.O. BOX 433

Kingston, N.S.

BOP-110 Tel # 765-4282



Guideposts for a Sustainable Future

P.O. Box 374, Merrickville, Ontario, Canada, K0G 1N0

phone: (613) 269-3500 fax: (613) 269-4693

e-mail: sustain@web.apc.org

38935

Sustainable activities:

- 1 - use materials in continuous cycles.
- 2 - use continuously reliable sources of energy.
- 3 - come mainly from the qualities of being human (i.e. creativity, communication, movement, appreciation, and spiritual and intellectual development).

Non-sustainable activities:

- 4 - require continual inputs of non-renewable resources.
- 5 - use renewable resources faster than their rate of renewal.
- 6 - cause cumulative degradation of the environment.
- 7 - require resources in quantities that could never be available for people everywhere.
- 8 - lead to the extinction of other life forms.

March 18, 1996

The Hon. Sergio Marchi
Minister of the Environment
Terrasses de la Chaudière
10 Wellington St.
Hull, PQ
K1A 0H3

Rec'd - DCU - DOE

MAR 22 1996

Reçu - UCM - MDE

Dear Mr. Marquis:

I am writing you today to express my concern about the Canadian Government's role in protecting the environment. It is important to the unity of our country that environmental regulation not be passed off to the Provinces. It is fine if individual Provinces want to go further in maintaining the health and integrity of their lands, but we must not allow the different jurisdictions to play off against one another offering pollution havens to attract business.

It's About our Health is a wonderfully comprehensive document which if heeded would do a great deal to protect present and future generations of Canadians against environmental degradation. **Why does the new CEPA agreement not contain more of the recommendations from that document?**

Please make sure that the revised CEPA covers the new considerations of biotechnology and the possible dangers of releasing engineered life-forms into the environment.

The land and life of Canadians need to be protected against persistent toxic chemicals. Many of these have been clearly identified. Their continued release into our territory can cause nothing but accumulating harm. **Please tell me: how will the new CEPA eliminate this threat to my childrens?**

(over)

How will our rights as citizens, to live in a land with safe water, clean air and fertile soil be maintained? The decision makers of today had the opportunity to grow up in a land with these qualities. It is your responsibility to assure that these are not lost. To allow their loss would be to violate the trust of the many generations who cared and toiled that we might live in a better world. We need a Bill of Rights that empowers individuals to join with environmental protection agencies in identifying and prosecuting polluters who threaten Canadians by depreciating our territory for their own gain.

We need to know where the dangers lie. **Are you going to require interests that create harmful substances to report their activities; what they are producing and how it will be disposed of?**

Please let me know your answers to these questions.

Yours truly,

A handwritten signature in dark ink, appearing to read 'Mike Nickerson', with a long horizontal flourish extending to the right.

Mike Nickerson
Sustainability Project Coordinator

U-UCU-DOE

006

U-UCM-MDE

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd-DCU-DOE

MAR 23 1998

Rec'd-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Mania Hagen Prc

Address:

P.O Box 102

Lawrencetown N.S.

B0S 1M0.

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

RECEIVED - LUCU - DOE

MAR 21 1996

RECEIVED - LUCU - MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Jeff Hamilton

Address: RR #1 Middleton

Box 100

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), *Revised*.

Rec'd-DCU-DCE

MAR 25 1998

Regu-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Aaron Hannam

Address:

81 Victoria St. Middleton
Nova Scotia B0S 1P0

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd-DCU-DOE

MAR 25 1996

Rec'd-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Fiona Harris

Address:

1201 Margaretville

Bosino, N.S.

Rec'd-DCU-DOE

APR 2 1996

Regu-UCM-MDE

PAMELA HARRIS
292 GLEN ROAD
TORONTO, ONTARIO
M4W 2X3
923-2271
MARCH 14, 1996

0-1021-24/E8

0-1025-1

139247

The Honourable Sergio Marchi, Minister of Environment
House of Commons
Ottawa, Ontario
K1A 0H8

Dear Mr. Marchi:

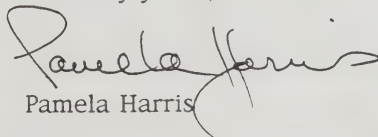
We want better environmental protection; we want the federal government to set stronger standards. From the sound of it, this is not happening. We need an environmental Bill of Rights, allowing us as citizens to stop polluters and to sue them. Give us the right to know who is polluting our environment, and in what way.

I have interviewed many women with breast cancer. They are the canary in the mine telling us that we must stop using chemicals that stay in our environment and build up in our bodies.

Take a lead. Add a new section to CEPA which applies to all biotechnology products that can enter the environment. Stop the development of new pollutants.

Perhaps you've read about the declining sperm rates around the world. We have to get serious about what this says about how we are spoiling our nest, and clean in up. Don't give into industry and the polluters. WE need stronger laws. Improve CEPA!

Sincerely yours,


Pamela Harris

RECEIVED
MINISTER OF
THE ENVIRONMENT

Healthy Communities Metro

100 College St., Suite 207, Toronto, Ontario, M5G 1L5
Ph: 978-1100 / 971 1365

MAR 22 2 21 PM '96

139281

The Honourable Sergio Marchi
Minister of the Environment
Terrasses de la Chaudière
10 Wellington St.
Hull, PQ
K1A 0H3

Rec'd-DCU-DOE

APR 2 1996

Regu-UCM-MDE

March 22, 1996

Dear Minister Marchi:

Metro Healthy Communities is a group of individuals and organizations that are dedicated to helping to create an urban community that is liveable, sustainable and healthy, from economic, social and environmental perspectives. We believe there is a vital link between a healthy environment and human health and well being. We are extremely concerned about the recent turn of events in the political landscape of Ontario and are dismayed about the cuts to social and environmental programs imposed by the Harris government. The vulnerability of the environment to provincial government policies has only reinforced our belief in a need for strong federal control over the environment.

There is a clear need to shift our approach to environmental management from a more traditional pollution control approach to one that is more proactive and progressive. Pollution prevention should be the foundation upon which environmental management, and in fact our whole industrial economy should be built. Every effort should be made to prevent the release of persistent toxic substances into the environment. The mounting evidence about the potential human health effects from synthetic compounds that mimic natural hormones is also cause for alarm and stresses the need for new approaches to evaluating chemical substances prior to their release into the environment. In the past, we have learned too late of the harmful consequences to human health and the environment of toxic substances. This should inform our approach to regulating biotechnology also. We need strong regulation to evaluate and control the release of new products/organisms before they are released into the environment in order to avoid accidentally unleashing more harm upon the environment.

In light of these concerns, we fully support the Guiding Principles for CEPA that the Standing Committee on the Environment and Sustainable Development articulated in their review of CEPA:

- pollution prevention
- ecosystem approach
- biodiversity conservation

0-1025-31

- precautionary principle
- user/producer responsibility

We do not want the Federal Government to dilute its commitment to these principles and yet this is what the proposed government response to the CEPA review has done. These principles are consistently being recognized internationally as the foundations of sustainable development. Only by revising CEPA in a manner that is consistent with these principles will Canada be able to fulfill its obligations under several international treaties, including the Great Lakes Water Quality Agreement, The Biodiversity Convention and the Framework Convention on Climate Change, and will Canada be able to tell its citizens that it is working to safeguard our health.

To reinforce the statements made above, we would like to emphasize our commitment to the following concerning the CEPA review:

1. we want strong federal leadership on the environment and would like the federal government to enact tough environmental standards to ensure that Canadians across the country are guaranteed equal environmental protection
2. we want the use and release of persistent toxic substances banned or phased out
3. we would like to see the enactment of a Federal Environmental Bill of Rights, which would include the right to sue polluters who violate CEPA
4. we want disclosure on who is releasing what to the environment and full public access to this information
5. we want tough regulations for biotechnology and believe that Environment Canada and Health Canada should have regulatory control over biotechnology so that proper consideration of the human health and environmental impacts of products of biotechnology are considered
6. we strongly urge the federal government to make pollution prevention a priority

In conclusion, we urge you to consider these matters seriously and to act on the recommendations of the environmental health community and others that are genuinely concerned about the long term health of our communities and the environments we live in.



Elizabeth Bush
member HCM
19 Marilyn Cr.
Toronto, Ont.
M4B 3C5

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

H. Heap Harold Heap

Address:

P.O. Box 299 Jamestown
Nfld AOC 1V0

RECEIVED
MINISTER OF
THE ENVIRONMENT

MAR 25 8 47 AM '96

128 Huron Ave N.
Ottawa, ON
K1Y 0W2

Dep't

139115

0-1025-31

March 22, 1996

Sergio Marchi
Minister of the Environment
Terrasses de la Chaudière
10 Wellington
Hull, PQ
K1A 0H3

Rec'd - DCU - DOE

MAR 28 1996

Reçu - UCM - MDE

Post-it Fax Note	7671	Date	March 22	# of pages	1
To	Sergio Marchi	From	Dave Henderson		
Co/Dept	Ministry of Environment	Co.			
Phone #		Phone	613 722-1305		
Fax #	819 953-3457	Fax #			

Dear Mr. Marchi,

I just read an article in the March 22, 1996 Globe and Mail "New Council to Police Environment" where you expressed your support for the newly-created Arctic Council and implied your concern over the widespread pollution of the arctic. Bravo, your government and yourself should be praised for such a policy position - our Arctic and its peoples are truly a Canadian treasure.

Then I reviewed the new Canadian Environmental Protection Act (CEPA) and asked myself if this was the same administration that is so strongly in favor of protecting our arctic environment.

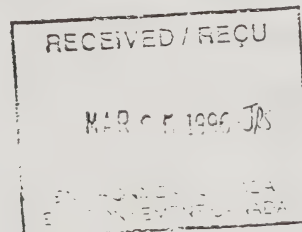
How can the Minister of the Environment make claims to protect our environment without showing the leadership and staking the jurisdictional turf that will allow it to realize these lofty goals? CEPA could be significantly strengthened to provide the sorts of leverage that will be required to mitigate the harmful effects of air-and-water borne toxic chemicals that accumulate in the arctic food chain and more importantly in its peoples.

Nowhere is the threat from climate change more real than in the Arctic. As the end point for planetary heat transfer, model predictions are truly apocalyptic for this region in a globally warmed world. The damage to the arctic from global warming would be many times greater than that of toxic chemicals and yet Canada refuses to take the strong leadership position necessary to ensure that it meets its Rio targets. CEPA establishes an untenable framework that will limit any federal attempts to deal with international agreements by giving the provinces a veto in "global commons" concerns such as air and water. The Arctic is not well served by this sort of power sharing.

There are true opportunities to strengthen CEPA, not only for the sake of protecting our arctic ecology and people but for the good of Canadians.

Sincerely,

Dave Henderson



Dept. resp.

Joan / David Hines
15862 Lakeshore Rd. W., R.R. 2,
Port Colborne, Ontario
L3K 5V4
905-899-3430/fax: 905-899-1213

138923

Monday, March 18, 1996

The Honorable Sergio Marchi,
Minister of the Environment
10 Wellington St.,
Hull, PQ, K1A 0H3

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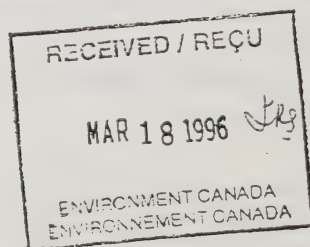
Fax: 819-953-3457

This is to voice our concern that the government support the protection of
Canadians health and environment.

- The federal government should take a strong leadership role in environmental protection by setting environmental standards.
- The use and release of chemicals that persist in the environment and build-up in wildlife and humans should be banned or phased-out, since neither humans nor the environment can tolerate these substances.
- The Canadian public needs an environmental Bill of Rights, which includes the right to intervene when the environment is being harmed and the right to sue polluters that break the law.
- The Canadian public should also have the right to know who is releasing which pollutants into the environment through comprehensive public access to information that includes all toxic releases to the environment, including substances sent off-site for recycling or incineration.
- The protection of human health, safety and the environment should be the priority of the government in the regulation of biotechnology and a new section should be added to CEPA, to be administered by Health Canada and Environment Canada, which applies to all biotechnology products which may enter the environment.
- New provisions must be enacted to require all sectors of society to prevent the use and generation of pollutants rather than controlling them.

Thank-you

J.M. Hines
D.W. Hines



DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Connie Hortie (CONNIE HORTIE)

Address: P.O. Box 591
KINGSTON, ONT.
K6P 1R0

C. 8. 8. 8.

DEAR HONOURABLE SERGIO MARCHI

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IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Juele Hortie (JUELE HORTIE)

Address: P.O. Box 547

WILSON N.S.

Box 110

Hydro
Québec

Le 13 mars 1996

Monsieur Sergio Marchi
Ministre de l'Environnement
Environnement Canada
Terrasse de la Chaudière
10, rue Wellington, 28e étage
Hull (Québec)
K1A 0H3

Benoît Michel
Président-directeur général

Hydro-Québec
75, boulevard René-Lévesque ouest
Montréal (Québec)
H2Z 1A4

OBJET: L'examen de la Loi canadienne sur la protection de
l'environnement (LCPE) : Réponse du gouvernement

Monsieur le ministre,

Nous avons pris connaissance de la réponse du gouvernement intitulée *"Mesures législatives sur la protection de l'environnement conçues pour l'avenir - Une LCPE renouvelée"*, déposée en chambre le 14 décembre 1995 et vous transmettons ci-après nos commentaires. Il nous fait plaisir de contribuer par la présente aux efforts du gouvernement de réviser cette loi.

Le document sous étude identifie 10 éléments que le gouvernement entend incorporer dans la LCPE révisée. À titre d'utilité publique oeuvrant dans un cadre réglementaire provincial déjà complexe, Hydro-Québec propose que les efforts d'Environnement Canada portent avant tout sur l'harmonisation de la législation environnementale canadienne, eu égard à l'essor du marché Nord-américain.

Au moment de la promulgation de la LCPE, l'objectif était de garantir l'uniformité des normes et l'équité dans l'application de celles-ci. Nous ne pouvons qu'abonder dans le sens que vous suggérez, soit l'importance de s'assurer que la vision environnementale en soit une de réel développement durable à l'échelle du pays. C'est dans cet esprit que les commentaires de l'Association canadienne de l'Électricité (ACE) ont été formulés lors des audiences du Comité permanent de l'Environnement et du développement durable de la Chambre des communes. Une copie de ce mémoire est jointe aux présentes. Hydro-Québec souscrit pleinement aux recommandations de l'ACE qui ne semblent malheureusement pas avoir été retenues dans la réponse du gouvernement.

L'ACE recommandait de ne pas incorporer à la LCPE les nouveaux «concepts» de la science de l'environnement. L'ACE était plutôt d'avis qu'ils pouvaient faire partie du préambule. Or, plusieurs éléments de la réponse du gouvernement vont à l'encontre de ces recommandations de l'ACE. Le gouvernement prévoit plutôt d'inclure dans le corps de la Loi des définitions de développement durable (recommandation 1.1), de prévention de la pollution (recommandation 1.2), d'écosystème (recommandation 1.3) et de diversité biologique (recommandation 1.4).

**Hydro
Québec**

Monsieur Sergio Marchi
Le 13 mars 1996
Page 2

Nous réitérons que le rôle du gouvernement fédéral en matière de conformité, d'inspections et d'infractions devrait être revu en profondeur. L'idée de créer de nouveaux recours de nature «civile» devrait être abandonnée. Quant au «principe de prudence», son application hors du cadre dans lequel il a à l'origine été développé, pourrait paralyser l'ensemble de l'activité industrielle.

Cette révision quinquennale nous apparaît l'occasion pour le gouvernement fédéral d'innover en s'inspirant notamment du programme ARET qui constitue l'un des efforts remarqués du gouvernement canadien en matière de programme volontaire. Voilà l'exemple d'un rôle renouvelé et d'une action respectueuse des autres intervenants en matière de gestion de l'environnement.

En définitive, il faut dépasser le paradigme selon lequel toute question environnementale revêt «nécessairement» un caractère national ou planétaire. En fait, les enjeux environnementaux de cet ordre sont rares et, pour plusieurs d'entre eux, connus (gaz à effets de serre, biodiversité, etc.). Il y a beaucoup à faire dans ces champs d'activités alors que le contexte économique actuel le permet déjà difficilement. Le gouvernement fédéral devrait s'attarder à ces enjeux en explorant de nouveaux moyens pour y faire face et ce, avant d'envisager l'adoption de nouvelles normes.

Veuillez agréer, Monsieur le ministre, l'expression de mes meilleurs sentiments.

Le président-directeur général



Benoit Michel

c.c.: Guy Chevette, ministre des Ressources naturelles
David Cliche, ministre de l'Environnement et de la Faune
Yvon Martineau, président du Conseil d'administration
Hans Konow, président de l'ACÉ
Pierre Baillargeon, secrétaire général

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Jean Ellegren

Address:

855 Catalina Lane

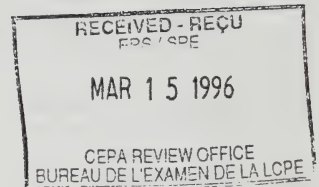
Greenwood, N.S.

Scott M. Hand
President

(416) 361-7667 Telephone
(416) 361-7734 Facsimile

March 11, 1996

The Honourable Sergio Marchi, P.C., M.P.
Minister of the Environment
Terrasses de la Chaudière
10 Wellington Street
Hull, Quebec
K1A 0H3



Dear Minister:

I have enclosed Inco's response to your request for comments on the Government Response to the 1995 Report of the Standing Committee on Environment and Development, **"It's About our Health! Towards Pollution Prevention, CEPA Revisited."**

Inco Limited conducted a detailed review of the government's response to CEPA and prepared the following series of 33 recommendations, organized by chapter title from the original document. Inco has concerns that the federal government is overreaching its authority in the CEPA process, and intruding into areas that are currently adequately regulated by provincial and municipal governments. In some respects, therefore, this may make the CEPA process a constitutional issue. After a detailed review, we find it hard to find a justification for this new legislation. Inco feels that the federal and provincial governments should refocus their efforts on the harmonization process for regulations, with the aim of eliminating the current duplication of authority. This streamlining of government authority will be critical if all levels of government are to achieve their deficit reduction targets.

Inco is also greatly concerned about the low priority assigned to risk assessment within Environment Canada's toxic substances assessment process. We do not perceive there to be a major problem with the hazardous substances currently used in Canada, which are adequately regulated by both levels of government, and we question the need for the massive intervention that the federal government is proposing under CEPA. We believe that hazardous substances need to be identified and the risk they pose to health and the environment needs to be scientifically assessed before regulations are proposed. However, the current tendency to collect a 'metal and its compounds' under a single hazard banner is not scientifically valid. Instead, we strongly believe it is essential to have each metal and each of its compounds

individually assessed because of the specific physical-chemical and toxicological properties each substance possesses. The government should allow sufficient time to properly complete such an assessment program. Unfortunately this has not been the case to date.

If you or your officials have any questions about the points made in this submission, please do not hesitate to contact me or any of my senior staff. Inco will await the results of this consultation with much interest.

Yours truly,

Scot M. Hand



"CEPA Revisited"
Response to the Recommendations
of the Standing Committee
on
Environment and Sustainable Development
by Inco Limited
March 1996

Summary

The Standing Committee's 1995 Report, "It's About Our Health! Towards Pollution Prevention, CEPA Revisited", with its 141 far-reaching recommendations, met with strong opposition from Canadian industry. The Report reflected a fundamental shift away from the original intent of CEPA and the voluntary approaches and principles of sound environmental management that have been responsible for many of the improvements in Canada's environmental quality and health over the last twenty years. A CEPA revised on the basis of the Standing Committee Report would cause an unjustified, unworkable and unaffordable expansion of federal powers at the expense of the provinces, while creating additional regulatory duplication. Many of the recommendations were based purely on environmental considerations, without acknowledging the important duality of a healthy economy and environment. Among the most serious reversals, for Inco, was the new emphasis placed on toxic use reduction over risk management.

Given the comprehensiveness of CEPA, and the enormous potential for adverse economic effects that the Standing Committee proposals hold for Inco, considerable time was devoted to this review. Inco supports the overall intent of CEPA in its focus on pollution prevention, an ecosystem approach, biodiversity, the precautionary principle and producer/user responsibility as integral to achievement of sustainable development.

Inco believes that a number of serious, broad and overarching concerns exist which present significant obstacles to ensuring an effective CEPA while retaining the competitiveness of Canadian industry. These involve questions of jurisdiction, including the constitutionality and intrusiveness of a extended federal authority, obvious increases in regulatory duplication and the cost of increased enforcement and compliance, inconsistent with a declining government resource base and the current focus on deficit reduction. Other concerns involve the potential for adverse impacts on trade and competitiveness, the need to build in an appeal mechanism associated with a CEPA-toxic designation and increased assurance that recycling is excluded from the definition of waste.

In Inco's view:

- many of the proposed changes, such as those related to emergency preparedness and federal authority requiring companies to prepare pollution prevention plans, represent an unwarranted intrusion by the federal government on provincial jurisdiction and replicate existing legislation. **Clarification is needed regarding the constitutionality of increased federal authority**, particularly in light of the recent ruling by the Quebec Court of Appeal concerning the Interim Order Respecting Chlorobiphenyls (PCBs). Federal involvement in areas of current provincial jurisdiction, such as the movement of wastes across provincial borders, should be minimal and take place only

at the request of the affected provinces. Otherwise, Inco believes that federal attention is more properly directed to the international arena and areas of national interest;

- CEPA is predicated on the assumption of strong federal/provincial cooperation and coordination. Inco believes that **immediate resumption of federal/provincial negotiations toward harmonization, including establishment of transparent, open processes to coordinate environmental measures and eliminate existing and future areas of duplication**, is a necessary pre-condition for an effective CEPA. In addition, collaboration should extend to include **mandatory provincial and industry representation on all Canadian delegations** to international meetings and negotiations which involve national commitments;
- the importance of **risk assessment** as the determining factor in the decision to control CEPA-toxic substances needs substantial reinforcement in CEPA. Inco supports the importance of science and the precautionary principle by including them in the Preamble to CEPA. However, risk assessment is a critical component of the science which must be applied, along with the precautionary principle, in determining which substances are both toxic and in need of control. All components are necessary to meet the intent of CEPA and avoid unnecessary restrictions on products whose use can be managed safely. Inco believes that the principle of risk assessment and safe use is the key determinant to the intent of CEPA and should be specifically mentioned in the Preamble, on a par with the commitment to sound science and the precautionary principle. Risk assessment should also be reinforced throughout Chapter 9, Controlling Toxic Substances;
- there are no provisions for appeal or to reverse decisions on toxicity and risk under CEPA. Inco believes that room must be made for **re-assessment of risk**, based on new information that may become available with advances in science, technology development and new applications for existing substances. As it stands, the process for reviewing substances on the Priority Substance List does not allow for future re-consideration of today's decision. Nor does it provide a mechanism whereby affected parties may appeal on scientific grounds to a **mandatory Board of Appeal** before a substance is designated CEPA-toxic or regulatory controls are applied. This is a serious omission which must be corrected before the legislation is finalized. Canada must not lock its industry into a technology freeze by not allowing for re-assessments as knowledge improves with time.
- while Canada must take note of decisions taken by other countries, it is essential that **decisions regarding acceptable levels of risk in the use of inherently toxic substances be based on Canadian circumstances and be scientifically supportable**. Bans or other control measures on substances produced in Canada may be used by

other countries to promote their own trade interests. Care must be taken to ensure that bans or decisions to otherwise control substances taken in foreign jurisdictions serve only as an indicator to Canadian authorities in their research and not adopted at face value;

- CEPA should embrace the full range of policy instruments to address environmental protection. As it stands, voluntary programs are not given sufficient attention, nor are fiscal incentives. Inco believes that CEPA should include support for revived interest in **accelerated capital cost allowance** as a means of promoting investment in environmental protection and improvement. The program as introduced in 1972 has been made much less attractive to industry with subsequent budgets. Tax-driven incentives are far better than cash grants to encourage investment to improve the environment.
- the proposal to introduce a "**civil remedy for environmental risk**" is clearly not consistent with Canada's common law conventions on civil liability and should not be contemplated.

Résumé

Le rapport 1995 du Comité permanent, "Notre santé en dépend! Vers la prévention de la pollution, l'examen de la LCPE", propose 141 recommandations de grande portée qui ont soulevé beaucoup d'opposition au sein de l'industrie canadienne. Le rapport présente dans son ensemble un détournement fondamental des buts premiers de la LCPE, des actions volontaires et des principes sensés de gestion de l'environnement qui ont été responsables depuis les vingt dernières années des améliorations apportées à la santé canadienne et à la qualité de son environnement. Si la LCPE était modifiée selon le rapport du Comité permanent, il en résulterait malheureusement une augmentation injustifiable, impraticable et onéreuse des pouvoirs fédéraux au dépend de ceux des provinces, tout en ajoutant aussi aux lois et règlements. Or le gouvernement a promis de réduire les règlements superflus et non pas d'en créer d'autres. Plusieurs de ces recommandations ne s'adressaient qu'à la dimension environnementale de la situation sans reconnaître l'autre moitié de chaque situation, c'est-à-dire, la dimension économique. Parmi les revirements les plus risqués pour Inco, nous soulignons l'importance nouvelle accordée à la réduction de l'utilisation des substances toxiques au dépend d'une gestion mesurée de ces substances.

Le rapport a été examiné en profondeur étant donnée la portée de la LCPE et l'impact économique négatif pour Inco généré par les recommandations du Comité permanent. Inco appuie cependant entièrement les principes qui guident la LCPE: la prévention de la pollution, l'approche écosystémique, la biodiversité, la prudence et la responsabilité de l'utilisateur/du producteur. Ces principes guident entièrement la réalisation d'un développement durable.

Inco croit qu'il existe un nombre important de questions et de facteurs sous-jacents qui représentent des obstacles sérieux au fonctionnement efficace de la LCPE et à la compétitivité de l'industrie canadienne. Ces sujets touchent à des questions de juridiction, incluant la constitutionnalité et l'opportunité d'une autorité fédérale agrandie, à l'augmentation évidente d'une duplication des règlements, et aux coûts résultant de leur mise en application. Tout ceci contredit les efforts actuels du gouvernement de réduire son interférence, ses effectifs et son déficit budgétaire. D'autres questions adressent un impact éventuel négatif sur nos échanges commerciaux et notre compétitivité, un besoin d'intégrer un mécanisme d'appel associé à une identification officielle de la LCPE et une meilleure assurance que le recyclage est exclu de la notion de déchet.

Selon Inco:

- plusieurs des changements proposés, tels ceux s'adressant aux mesures en cas d'urgence et au pouvoir de l'autorité fédérale d'exiger des compagnies des plans de prévention de la pollution représentent une intrusion injustifiable du gouvernement

fédéral dans la juridiction provinciale et doublent les lois déjà en place. **Il y a donc un besoin d'une meilleure clarification concernant la constitutionnalité d'une augmentation de l'autorité fédérale** particulièrement à la lueur de la décision récente de la Cour d'appel du Québec concernant l'Ordonnance Intérimaire au sujet des BPC. Une implication du fédéral au sein de la juridiction provinciale actuelle, comme par exemple le transport des déchets d'une province à l'autre, se devrait de rester minime et de se limiter à répondre aux demandes des provinces affectées. Inco croit d'ailleurs que la participation fédérale aurait plus d'impact aux niveaux national et international;

- la LCPE n'est efficace que grâce à une bonne entente fédérale/provinciale. Inco croit fermement que **la réouverture immédiate des négociations fédérales/provinciales visant l'harmonisation et incluant la création d'un processus ouvert pour la coordination des mesures environnementales et l'élimination de toute duplication**, est une condition nécessaire à l'efficacité de la LCPE. De plus, cette collaboration devrait inclure une **représentation officielle des provinces et de l'industrie au sein des délégations canadiennes** dans le cadre des rencontres internationales, ainsi que lors de négociations qui résultent en engagements à l'échelle nationale.
- un facteur important et déterminant dans la décision de contrôler les substances toxiques de la LCPE est celui de **l'évaluation du risque**; il doit être renforcé substantiellement dans la LCPE. Inco supporte l'importance de la science et de la prudence et les inclue dans le préambule de la LCPE. L'évaluation du risque est cependant un facteur scientifique critique et doit être appliqué conjointement au principe de la prudence, lors de l'évaluation de la toxicité des substances. Tous ces éléments sont nécessaires pour atteindre les objectifs de la LCPE et éviter les restrictions inutiles imposées sur des produits qui peuvent être utilisés sans danger. Inco croit que le principe d'évaluation du risque et d'usage prudent est un facteur clé pour la mise en place de la LCPE et devrait être adressé spécifiquement dans le préambule, en accord avec un engagement scientifique sensé et prudent. Le principe de l'évaluation du risque devrait aussi être approfondi au chapitre 9, "Lutte contre les substances toxiques";
- la LCPE n'a présentement aucune clause d'appel ou autre mécanisme de changement de décision relatifs à la toxicité et au risque. Inco est d'avis que l'on doit faire place à la notion de réévaluation du risque, et ceci à cause de nouvelles informations provenant de futures découvertes scientifiques, technologiques et de nouvelles applications de produits. Tel qu'il existe, le processus de révision des substances incluses dans la liste des substances d'intérêt prioritaire ne permet aucune réconsidération éventuelle des décisions prises à ce jour. De même il ne propose aucun recours - telle une **Commission d'appel** - destiné à l'usage des groupes concernés et accessible avant que des produits ne soient classifiés toxiques selon la LCPE ou que des contrôles réglementaires ne soient appliqués. Ceci constitue un oubli

sérieux qui doit être rectifié avant que l'on mette au point la législation. Le Canada ne peut se permettre de priver son industrie des développements technologiques futurs en refusant d'admettre la possibilité de réévaluations.

- le Canada doit être au courant des décisions prises ailleurs; il est essentiel toutefois que pour déterminer les niveaux acceptables de risques dus à l'usage de substances à toxicité intrinsèque, ces décisions soient appuyées par des données scientifiques canadiennes. D'autres pays peuvent même contrôler ou interdire l'usage de substances produites au Canada dans le but de promouvoir leurs propres intérêts commerciaux. **Ces mesures étrangères peuvent servir de guide dans la recherche effectuée par les autorités canadiennes mais ne devraient pas être considérées déterminantes.**
- la LCPE devrait profiter de la vaste gamme de programmes gouvernementaux aux fins générales de la protection de l'environnement. Présentement, trop peu d'attention et d'encouragements fiscaux sont accordés aux programmes d'initiative volontaire. Inco croit que la LCPE devrait proposer de promouvoir à nouveau les allocations accélérées aux coûts de capitaux comme sources d'investissement pour la protection et l'embellissement de l'environnement. Ce programme introduit en 1972 a perdu régulièrement de ses attraits à chaque budget gouvernemental. Des exemptions d'impôts sont beaucoup plus attrayantes que des subventions pour encourager les investissements dans le milieu.
- l'idée d'offrir aux citoyens le droit de poursuite judiciaire contre un tiers parti qui aurait enfreint à la LCPE n'est pas à notre avis recommandable. Ce sont les gouvernements qui imposent les lois et ce sont eux qui devraient veiller à ce qu'elles soient obéies.

Introduction

As a Canadian-based natural resource company and one of the world's premier mining and metals enterprises, Inco Limited is committed to the concept of sustainable development, recognizing a healthy environment as good business. A major exporter and employer of 15,900 workers in 21 countries, including 9,000 jobs in Canada across 5 provinces, Inco is keenly aware of the negative impact that improperly designed or administered Canadian environmental policies may have on production costs and international competitiveness if economic factors, particularly international market considerations, are not reflected in the development of Canadian policy.

Inco looks upon the five-year review of the Canadian Environmental Protection Act (CEPA) by the Standing Committee on Environment and Sustainable Development as an important opportunity to assess CEPA. In its submission to the Standing Committee, in September 1994, Inco endorsed the fundamentals of the CEPA process, and recommended that the commitment to enforcement and compliance through voluntary environment audits be enshrined in CEPA. However, Inco strongly criticized the government for improper administration of the Act, particularly its interpretation of Section 11, and the failure to conduct a risk assessment of substances on the Priority Substance List (PSL) before they are declared CEPA-toxic. Inco emphasized the serious regulatory and international market implications associated with a CEPA-toxic designation. Regulators were urged to limit assessment to substances whose current and future emissions are likely to pose an environmental risk and to assess inorganics as they do organics, on a substance-by-substance basis, rather than by grouping metals with their compounds, each of which has different properties. Additional recommendations were made concerning the need to open up the process for evaluation of substances on the PSL to more meaningful public consultation.

Summary of Recommendations

Chapter 1: GUIDING PRINCIPLES

1. Risk Assessment should be added to the list of Guiding Principles and included in the revised Preamble to the Act.
2. The Government should immediately resume discussions with the provinces on the harmonization of environmental protection legislation and duplicative regulatory responsibilities.
3. The principle of risk assessment and safe use should be specifically mentioned in the Preamble, on a par with the commitment to sound science and the precautionary principle. Risk assessment should also be reinforced throughout Chapter 9, Controlling Toxic Substances.
4. References to the need for cost-benefit analysis should be strengthened and included as necessary steps in policy development and regulations under CEPA, particularly those concerning the control of pollution, wastes and toxic substances.
5. Because of the lack of clarity associated with the concept of User/Producer Responsibility and how it should be applied, it should not be included in the Preamble to CEPA or as a Guiding Principle.

Chapter 2: ADMINISTRATION

6. The Government should re-introduce the Accelerated Capital Cost Allowance (ACCA) for investments in pollution prevention on the same basis as used in the original 1972 legislation.
7. Enabling Authority concerning Tax Policy or Fiscal Incentives for Environmental Protection Purposes should remain under the auspices of the Minister of Finance and the Financial Administration Act (FAA) and not be transferred to CEPA.
8. The title of the Section on non-regulatory initiatives should be changed to "Voluntary Approaches."
9. The proposal to provide the federal Minister of Environment with authority to enter into binding environmental performance agreements with private sector companies and

related penalties should be deleted from a revised CEPA. Alternatively, the Government should require that the decision to establish such agreements should reside with the Governor-in-Council and not be at the discretion of a single Minister.

10. Authorities currently contained in the FAA relating to cost recovery should not be transferred to CEPA and that a definition of "beneficial services," as well as details on what areas are proposed for cost recovery, should be included in the relevant sections of CEPA.

Chapter 3: PUBLIC PARTICIPATION

11. If in the right of a citizen to take civil action in certain circumstances there is a violation of CEPA, appropriate limitations and safeguards should be put in place to prevent abuse, similar to those present in the Ontario **Environmental Bill of Rights, 1993**.
12.
 - a. The proposal to include a civil remedy for the creation of environmental risk and a concept of reverse onus of proof to CEPA should be rejected on the basis that sufficient grounds already exist in Canadian law upon which civil actions for environmental damages may be based; and,
 - b. The concept of reverse onus to disprove causation also should be rejected as entirely inconsistent with Canada's common law.
13. The proposal to provide intervenor funding should be rejected on the grounds that it may encourage the proliferation of frivolous and vexatious cases.
14. The section of CEPA dealing with public rights should be enlarged to include the right of affected parties to challenge a CEPA-toxic designation and/or risk assessment and to request a mandatory Board of Review which is not left to Ministerial discretion.

Chapter 4: ECOSYSTEM SCIENCE & NATIONAL NORMS

15. The authority for the Minister to require submission of information for research and publication should not be included in proposed amendments to CEPA; alternatively, limits to information-gathering authority need to be clearly defined in the Act, coordinated with Statistics Canada (to avoid collecting information already available), restricted to information already in the possession of the industry source and sought only with the approval of the Governor-in-Council.

Chapter 6: POLLUTION PREVENTION

16. The proposal to provide the Minister with authority to require pollution prevention plans for substances declared CEPA-toxic should be dropped. However, if the amendment proceeds, provisions should be included to:
 - a. require the Minister to seek authority through the Governor-in Council and require plans on an exceptional basis, where it can be demonstrated that existing plans at the provincial or municipal level are not sufficient and there are specific risks to human health or the environment;
 - b. ensure that industry, the provinces and municipal authorities are consulted in development of voluntary and flexible guidelines for pollution prevention plans and a streamlined process which avoids duplication and overlap;
 - c. remove the reference in the introductory sentence to Schedule 1 substances and emphasize that a risk assessment must have been conducted to determine a risk to human health or the environment before a substance is declared in need of control; and,
 - d. require the Minister to demonstrate that information requests are reasonable, justified and cost-effective.
17. The proposal to create a new framework for environmental emergencies, as well as prevention, preparedness, response and recovery should not be accepted on the grounds that sufficient and appropriate authority already exists in the Constitution. Additional requirements would create overlap and duplication, unjustified costs and add further complexity to an already complex process.
18. The proposal to develop a national registry of fixed sites containing undefined quantities of hazardous substances in excess of specified amounts should not be included in CEPA on the grounds that it is duplicative, unmanageable and not cost-effective.
19. The proposal to introduce cost recovery provisions to deal with the environmental aspects of emergencies should be rejected; if, however, these cost recovery provisions are to be included in CEPA, appropriate limitations and procedural safeguards (similar to those found in the **Canada Shipping Act**) should be put in place to prevent abuse.

Chapter 8: CONTROLLING POLLUTION AND WASTES

20. The proposal to enlarge federal powers respecting provincial control of domestic sources of international air pollution should be dropped; alternatively, provisions should be added to ensure that federal measures to force provinces to enact legislation are assessed for their economic and sectoral implications and the results made public before such steps are taken.
21. Provincial approval of Canadian positions in advance of international environmental negotiations, as well as direct representation on all Canadian delegations, should be mandatory.
22. References to risk assessment and risk-based decision making should be included in Chapter 8 in relation to all proposals to reduce, phase out or ban hazardous substances.
23. The proposal to introduce a new requirement to prohibit the export of waste for disposal should be rejected and CEPA should be amended to support the inclusion of transboundary movement of hazardous waste for disposal.
24. Federal authority to ban and control the export and import of hazardous & non-hazardous wastes and to increase and alter reporting requirements under the Transport of Dangerous Goods Act (TDGA) should not be included in amendments to CEPA as not cost-effective, not consistent with the concept of environmental stewardship and likely to inhibit recycling and investment.
25. The proposal to introduce cost recovery for applications relating to all movements of hazardous and non-hazardous waste should be rejected.
26. The proposed amendments concerning CEPA & Canada's oceans should include:
 - a. a clear definition of "uncontaminated inert inorganic material;"
 - b. a requirement for consultation with land-based industries on new proposals for coastal zone management under CEPA, in particular with affected industries in development of the proposed List of Wastes Authorized for Disposal in the Ocean.
27. In addition to the 10-day objection period for public comment, a limit should be established, in consultation with industry, on the time allowed for federal officials to review the request for a permit before issuing public notice which, if exceeded, would mean a decision, by default, in favour of the applicant.

Chapter 9: CONTROLLING TOXIC SUBSTANCES

28. Control of toxic substances should remain consistent with the original intent of Section 11 of CEPA and that bioavailability should be considered as a factor in risk assessment.
29. Control measures adopted by other countries should be used only as indicators of the need to assess the properties of a substance in relation to Canadian circumstances. Efforts should be made to ensure that bans and other measures proposed by intergovernmental agencies in which Canada is a participant are based on risk and not used as disguised non-tariff trade barriers to restrict market access for Canadian products.
30. Unwarranted group or class assessments should not be allowed as part of the process for determining which substances are toxic and in need of control. Metals and their compounds have to be assessed on a species-by-species basis.
31. The proposal to eliminate risk assessment for Track 1 substances should be dropped.
32. If no decision is issued on the testing of substances on the Priority Substances List within the agreed timeframe, the decision should be deemed to be in favour of the affected party.
33. CEPA should be amended so that the establishment of a Board of Review is not discretionary, with appropriate limitations and procedural safeguards established to ensure that this appeal mechanism is not abused.

DETAILED COMMENTS

Overview

"shared responsibilities" and "minimizing overlap and duplication .. with provinces"

In the Government's Response, Environment Canada notes that each level of government has jurisdictional powers which are essential for effective environmental management. The exercise of these powers has not been coordinated between governments. Instead, what has developed is an increasingly complex web of environmental legislation with frequent overlap, duplication and inconsistency between federal and provincial regulatory initiatives. The different levels of government appear to be confused regarding the limits of their jurisdiction. Further, our Courts have not yet clarified this confusion.

This **confusion over jurisdiction** is clearly a concern. The federal and provincial governments must delineate their particular areas of jurisdiction. They must work together to clearly define their respective roles and responsibilities regarding environmental matters. Further, while recent efforts toward harmonization are welcome as a first step, these efforts must be expanded and coordinated to weed out the duplication. Increased cooperation and harmonization of regulatory efforts between the federal and provincial governments are imperative to avoid the uncertainty and unnecessary costs to business and government which result from duplication and inconsistency.

Chapter 1: GUIDING PRINCIPLES FOR AN EFFECTIVE CEPA

Inco supports the intent to adopt **sustainable development**, and the Brundtland definition, as the overarching policy goal of CEPA. We also support the expansion of the list of Guiding Principles to include **federal/provincial cooperation**, including Aboriginal self-government regimes, and, most important, **economic responsibility**. In Inco's opinion, regulation under CEPA has been undertaken without weighing the cost of regulation against the benefits to society. The cost of increased enforcement activity should be a major factor in weighing the need for greater federal involvement in light of **reduced government resources, budgetary restraint** and the overall push for **deficit reduction**.

Risk assessment needs to be added to the list. The focus of Inco's 1994 submission to the Parliamentary Committee was the failure of the Government to observe the intent of Section 11, particularly as it relates to the scope of study and basis for assessment. Specific recommendations were that only substances whose current and future use posed an environmental risk should be considered for a CEPA-toxic designation and that inorganics, such as metals and metal compounds (whose properties may vary considerably) should be assessed in the same manner as organics, i.e., on a species-by-species basis. To correct the perceived failure of the Government to interpret CEPA correctly, Inco also recommended

that a proper risk assessment be conducted of substances on the Priority Substance List (PSL) during the initial assessment phase; alternatively, risk assessment should be used during the Strategic Options process and, with no exception, before any decisions are made to regulate a designated substance.

The **precautionary principle** is based on the existence of hazard. Hazard does not constitute risk. Inco's sees the failure of the Government to implement fully Section 11 of CEPA as one of the most serious issues to be addressed by the review process. The Government has acknowledged **risk assessment** as a vital component of the process by which a substance is declared CEPA-toxic and, subsequently, controlled. Raising risk assessment to the level of a "guiding principle", on a par with the precautionary principle, would ensure that "safe use" becomes the objective, rather than simple reduction or elimination of toxics -- a goal which is more consistent with the concept of sustainable development and Canada's trade and economic interests.

Recommendation 1: Risk Assessment should be added to the list of Guiding Principles and included in the revised Preamble to the Act.

1.5 Intergovernmental cooperation

The concept of federal/provincial cooperation and coordination is at the heart of CEPA, which argues that environment protection is in the national interest and is not easily confined by political boundaries. CEPA implies a significant expansion of federal powers into areas currently under provincial control. Without a clear understanding of respective roles and responsibilities, CEPA will inevitably add to, rather than reduce, existing regulatory overlap and duplication. We may also be faced with "harmonized duplication" - hardly the preferred solution for industry which bears the cost of over-regulation. Clarification is also needed as to the constitutionality of some actions taken or contemplated by the federal government under CEPA, particularly in light of the 1995 Quebec Court of Appeal decision regarding the interim PCB order.

A clear delineation of roles and establishment of new or merging of existing processes are needed if CEPA is not to significantly increase the costs, and delays, for industry associated with compliance. Consequently, Inco urges that every effort be made to resume and re-invigorate discussions with the provinces with respect to clarifying environmental protection responsibilities and processes.

Recommendation 2: The Government should immediately resume discussions with the provinces on the harmonization of environmental protection legislation and duplicative regulatory responsibilities.

1.6 Science & the Precautionary Principle

Inco supports the proposal to underscore the importance of science and the **precautionary principle** by including them in the Preamble to CEPA. However, **risk assessment** is a critical component of the science which must be applied, along with the precautionary principle, in determining which substances are both toxic and in need of control. All three elements are necessary to meet the intent of CEPA and avoid unnecessary restrictions on products whose use can be managed safely.

Recommendation 3: The principle of risk assessment and safe use should be specifically mentioned in the Preamble, on a par with the commitment to sound science and the precautionary principle. Risk assessment should also be reinforced throughout Chapter 9, Controlling Toxic Substances.

1.8 Economic Responsibility

Inco supports the added emphasis given to economic responsibility in the implementation of CEPA and the reference to the need for cost-benefit analysis to support decision making.

Recommendation 4: References to the need for cost-benefit analysis should be strengthened and included as necessary steps in policy development and regulations under CEPA, particularly those concerning the control of pollution, wastes and toxic substances.

1.9 User/Producer Responsibility

While Inco supports the concept of “polluter pays”, we hesitate to endorse the related concept of user/producer responsibility without a clear understanding of what is meant. As the Government’s Response indicates, further work is needed to clarify to whom and how the concept could be applied. From Inco’s perspective, the concept may present serious problems for producers of primary products, particularly the mining sector. Given that many products are the result of numerous resource inputs, in varying combinations, and that many suppliers may have contributed to a single product, it may prove impossible to desegregate and assign responsibility for the final product and its use.

Recommendation 5: Because of the lack of clarity associated with the concept of User/Producer Responsibility and how it should be applied, it should not be included in the Preamble to CEPA or as a Guiding Principle.

Chapter 2: ADMINISTRATION

Inco supports the commitment to "**harmonization of environmental matters**, both multilateral and bilateral", with the caveats stated previously, and establishment of **Equivalency and Administrative Agreements**, along with **Environmental Management Agreements**, as a means of promoting efficiency in government. While pollution prevention is cast as a national goal, it is not clear that national objectives are not being currently achieved by provincial governments without increasing the federal government's authority in this area. Whatever accommodation is reached between the two levels of government, it is essential for industry that only one, consistent set of rules apply.

The use of **economic instruments** is an important addition to the policy instruments available to governments in promoting sustainable development. Inco believes that each proposed use of an economic instrument should be judged on its own merits and in relation to particular circumstances. For example, while Inco supports the concept of **tradeable permits** in some contexts, for Canada, and in dealing with air issues, we suggest careful study before they are adopted. Trading systems may have limited applicability in the Canadian context because the market may be too "thin." There may not be enough players to create an active market. The transboundary nature of air pollution is a further consideration and may warrant adopting a continental approach rather than a provincial approach.

Financial Incentives: Accelerated Capital Cost Allowance (ACCA) for Investments in Pollution Prevention

Inco supports the use of **financial incentives** and has argued that there is a need to revitalize the use of an **Accelerated Capital Cost Allowances (ACCA)** which was introduced in the 1970s by the Liberal government to encourage companies to invest in new equipment for the control of pollution. Environment Canada reviewed requests for ACCA and ruled whether the investment was made primarily for the purpose of environmental protection, not profit. The government would then allow the taxpayer to write off the equipment over two years, in contrast to the five to ten years allowed for industrial equipment.

Over the years, the federal government has watered down the incentive, replacing the "put in place" rule, with a "put in use" rule. They also introduced a half year provision so that only half of the write-off could be used in the first year, effectively changing the period from two to three years. When coupled with the "put in use" rule, this places an investment in pollution abatement equipment in a similar category for capital write-off to most other business investments. In sum, Finance has managed to virtually eliminate the incentive to invest in pollution abatement.

Inco believes that the renewal of the ACCA for investments in pollution prevention would provide a positive stimulus to the rate of adoption of new technology, with no cash outlay

from government. As new investments, these would also in no way diminish current tax revenues.

Recommendation 6: The Government re-introduce the Accelerated Capital Cost Allowance (ACCA) for investments in pollution prevention on the same basis as used in the original 1972 legislation.

Incorporation of Enabling Authority for Economic Instruments to CEPA can only be supported as long as recommendations for the use of taxes or financial incentives remain the purview of the Minister of Finance. It is Inco's view that fiscal policy should be determined by the department with the expertise, experience and understanding of the Government's overall financial objectives and should not be delegated to other Ministries.

Recommendation 7: Enabling Authority concerning Tax Policy or Fiscal Incentives for Environmental Protection Purposes should remain under the auspices of the Minister of Finance and the Financial Administration Act (FAA) and not be transferred to CEPA.

Voluntary initiatives are discussed in the section under the heading "Non-regulatory Approaches", along with a proposal to introduce federal authority to require individual companies to prepare **binding environmental performance contracts**. This requirement very closely approximates a regulatory requirement. The introductory paragraph implies that the Government has yet to commit to voluntary measures, as a valid component in the mix of policy instruments available. The fact that "voluntary" does not appear in the heading, although essentially this is all that is dealt with in this section, is equally surprising. This is all the more surprising, given the support that the Government has voiced at the OECD for voluntary programs and the existence of many examples in the domestic context. ARET and the Voluntary Challenge and Registry, which serves as the mainstay of our National Action Program on Climate Change are two cases which come to mind.

Inco is disturbed that voluntary programs are not given more profile and is strongly opposed to the proposed imposition of binding environmental performance contracts, which is clearly in the regulatory realm and does not appear to involve consultation with the provincial governments or recognize the central role that environmental management plays in most corporations. It ignores the significant uptake by industry, on a voluntary basis, of codes of conduct, guiding principles, environmental auditing and certification under international standards such as ISO 14000. This section would be much improved if voluntary initiatives were accorded the recognition they deserve. Inco resists, in principle, the concept of binding environmental performance contracts and wants it dropped from CEPA.

Recommendation 8: The title of the Section on non-regulatory initiatives should be changed to "Voluntary Approaches".

Recommendation 9: The proposal to provide the federal Minister of Environment with authority to enter into binding environmental performance agreements with private sector companies and related penalties should be deleted from a revised CEPA. Alternatively, the Government should require that the decision to establish such agreements should reside with the Governor-in-Council and not be at the discretion of a single Minister.

2.17 Cost Recovery

Inco believes the proposal to amend the FAA to **transfer authority** for cost recovery to CEPA is inappropriate and should be discarded on the basis that this is a tax provision and that responsibility for taxation should rest with Finance and not be delegated to another department.

Inco is further concerned at the extent of plans for **cost recovery**. Obviously, a "service of a beneficial nature" is open to some debate. Some restrictions need to be stated, or parameters set, for the scope of services which may devolve to the private sector as a "cost" but, in fact, represents, a tax.

Recommendation 10: Authorities currently contained in the Financial Administration Act (FAA) relating to cost recovery **should not** be transferred to CEPA and that a definition of "beneficial services" as well as details on what areas are proposed for cost recovery should be included in the relevant sections of CEPA.

Chapter 3: PUBLIC PARTICIPATION

3.9 Right to Sue & Civil Remedy for Environmental Risk

The Government Response proposes to amend CEPA to include a right for citizens to take civil action in certain circumstances if there is a violation of CEPA. This proposed amendment appears similar to the **right to sue** in Part IV of the Ontario **Environmental Bill of Rights, 1993**. Inco does not believe that such a right is necessary or appropriate. However, if such a right is included in CEPA, it is essential that appropriate limitations and procedural safeguards be put in place to prevent abuse. For example, a civil action should not be possible if due diligence was exercised, the alleged violation was authorized by law or the defendant complied with a reasonable interpretation of CEPA. These and other safeguards are present in Ontario's statute.

Recommendation 11: If in the right of a citizen to take civil action in certain circumstances there is a violation of CEPA, appropriate limitations and safeguards should be put in place to prevent abuse, similar to those present in the Ontario Environmental Bill of Rights, 1993.

The Government Response also takes under advisement the recommendation of the Standing Committee regarding the inclusion in CEPA of a civil remedy for the creation of environmental risk and a concept of reverse onus of proof. Inco strongly opposes these recommendations. Well-established grounds already exist in Canadian law upon which civil actions for environmental damages may be based, including the torts of negligence and nuisance. No further causes of action are necessary. Further, to place a reverse onus on the defendant to disprove causation is entirely inconsistent with Canada's common law.

Recommendation 12:

- a. The proposal to include a civil remedy for the creation of environmental risk and a concept of reverse onus of proof to CEPA should be rejected on the basis that sufficient grounds already exist in Canadian law upon which civil actions for environmental damages may be based; and,
- b. The concept of reverse onus to disprove causation also should be rejected as entirely inconsistent with Canada's common law.

3.10 Other Public Rights

Inco also opposes the proposal to provide **intervenor funding** on the grounds that it may encourage proliferation of frivolous and vexatious cases.

Recommendation 13: The proposal to provide intervenor funding should be rejected on the grounds that it may encourage the proliferation of frivolous and vexatious cases.

However, Inco believes that other rights should be considered. Specifically, Inco believes that this section should be enlarged to include **the right of affected parties to challenge the declaration of a substance as CEPA-toxic, as well as the risk assessment which leads to a control decision.** In addition, Inco also believes that provision should be made in CEPA to allow for the future **re-assessment** of a substance on the CEPA-toxic list, as well as the rescinding of related controls, in light of new scientific evidence regarding toxicity and risk, new technologies which permit safe use and new uses for the substance the benefits of which exceed the risks to the environment and human health.

Recommendation 14: The section of CEPA dealing with public rights should be enlarged to include the right of affected parties to challenge a CEPA-toxic designation and/or risk assessment and to request a mandatory Board of Review which is not left to Ministerial discretion.

Chapter 4: ECOSYSTEM SCIENCE & NATIONAL NORMS

4.2 Ecosystem Science & National Norms: Authority for the Minister to Require Submission of Information for Research & Publication

Inco finds the proposal that the Minister of Environment be empowered to require the submission of a seemingly unrestricted range of industry information one of the most intrusive and potentially costly proposed amendments to CEPA. In Inco's view, much of the information that would be required is already made available to other levels of government under different processes. Inco is unclear as to what information, beyond that which is already available, will be required or on what basis it is requested. It is Inco's view that only information directly related to CEPA could or should be included and that a specific listing of possible requirements is necessary. Nor is there a clear justification for what appear to be sweeping powers of the federal government to secure access to "whatever data is in one's possession or control". Businesses could be required to reveal confidential information - which may jeopardize competitiveness. There is also the implication that industry might be required to gather information not currently available but accessible, at a potentially high cost, in terms of human and financial resources.

It is clear that some limits would need to be applied if this amendment is adopted. The current listing which cites "information", without details as to what kind, type or form of data is contemplated, needs to be made specific and restrictive. The reference to information under the control of a corporation should be eliminated. These changes would minimize the potential for "fishing trips" and unnecessary expenditure of time and resources for industry. Finally, the authority to request such additional, if not superfluous, information should depend on consultation with other ministries. Therefore, the proposal should be amended further to require that authority be sought through the Governor-in-Council.

Recommendation 15: The authority for the Minister to require submission of information for research and publication should not be included in proposed amendments to CEPA; alternatively, limits to information-gathering authority need to be clearly defined in the Act, coordinated with Statistics Canada (to avoid collecting information already available), restricted to information already in the possession of the industry source and sought only with the approval of the Governor-in-Council.

Chapter 5: ENFORCEMENT

It appears that much of the authority sought is available to the federal government now. Inco's only comment with respect to this chapter is to reiterate concern that the federal government stay within the limits of enforcement authority provided by the Constitution, particularly as regards toxic substances, and that every effort is made to avoid intrusion into provincial jurisdiction and harmonize enforcement activities. The provision to permit ticketing may be one of the few proposals for CEPA which may reduce, rather than increase costs for industry.

Chapter 6: POLLUTION PREVENTION

6.1 Pollution Prevention Plans for CEPA Toxic Substances

Inco takes exception to the proposal to provide the Minister with authority "**to require the preparation of pollution prevention plans for toxic substances**" for "**substances declared CEPA-toxic (Schedule 1)**" on several fronts. First and foremost, Inco is unhappy with the **prescriptive and overly intrusive nature** of the proposal. Government should set goals and standards but not prescribe the means to oversee the way in which standards are met. Much of the information outlined in the suggested guidelines is excessive and could be of a confidential nature. Inco is also concerned that the proposal isolates pollution prevention, ignoring the existence of flexible, voluntary and cost-effective environmental management plans and auditing programs widely supported by industry. Inco is also concerned that:

- the proposal encroaches on existing provincial authorities. Pollution prevention and control is covered, to a large extent, by regulations at the provincial and municipal levels and will lead to further **duplication** and jurisdictional **overlap**;
- depending on the extent of federal government intervention, the overall effect of this proposal may be to **discourage innovation** and remove the incentive from industry for continuous improvement;
- the **cost**, for industry and government, in preparing and monitoring plans for the many substances that may be combined in a production process/product will accrue to producers and manufacturers, but not users, of substances declared CEPA-toxic and which will be components of a corporate environmental management plan; and,
- the **wording** of the first sentence 6.1 implies that a substance on CEPA Schedule 1 is necessarily also CEPA-toxic. This may be true in the minds of regulators but was not the intent of the legislation or the Government Response. Inco believes it is important to reinforce the fact that substances on Schedule 1 are declared CEPA-toxic based on the results of a properly conducted risk assessment, not inherent toxicity or hazard.

Recommendation 16: The proposal to provide the Minister with authority to require pollution prevention plans for substances declared CEPA-toxic should be dropped. If the amendment proceeds, provisions should be included to:

- a. require the Minister to seek authority through the Governor-in Council and require plans on an exceptional basis, where it can be demonstrated that existing plans at the provincial or municipal level are not sufficient and there are specific risks to human health or the environment;
- b. ensure that industry, the provinces and municipal authorities are consulted in development of voluntary and flexible guidelines for pollution prevention plans and a streamlined process which avoids duplication and overlap;
- c. remove the reference in the introductory sentence to Schedule 1 substances and emphasize that a risk assessment must have been conducted to determine a risk to human health or the environment before a substance is declared in need of control; and,
- d. require the Minister to ensure that information requests are reasonable, justified and cost-effective.

6.12 & 6.17 Prevention, Preparedness, Response & Recovery Framework (P2R2)

Inco opposes the amendment of CEPA to establish a new legislative framework for dealing with **environmental aspects of emergencies** on the grounds that legal authority already exists in the Constitution for the powers sought in these sections. Establishment of new powers will create further jurisdictional confusion and costly duplications in an area already governed by many existing regulatory requirements. The number of authorities and reporting requirements associated with a spill in the Great Lakes is a good example of this concern.

Recommendation 17: The proposal to create a new framework for environmental emergencies, as well as prevention, preparedness, response and recovery should not be accepted on the grounds that sufficient and appropriate authority already exists in the Constitution, additional requirements would create overlap and duplication, unjustified costs and add further complexity to an already complex process.

6.16 Site Identification & Registration

Inco believes there are obvious flaws in the premise underlying the government's wish to establish a **national registry of fixed sites** for hazardous substances. The first concern is that the wording suggests that "hazard" necessarily constitutes risk. This provision appears to be intended for CEPA-toxic substances only but it could mean every substance which is inherently toxic and may constitute a hazard -- but may not require control because management options exist to control the risk. Secondly, regulations already exist at the provincial and municipal regulations covering the import, manufacture, processing, transportation, use, storage and disposal of "hazardous" substances. For example, under the NPRI, certain substances trigger a municipal reporting requirement. Thirdly, the proposal does not take into account the dynamic and transitory nature of storage/use, etc. of hazardous substances. In fact, "fixed" sites may vary considerably in the amount and nature of hazardous substances stored or used at different times. Finally, the system adds to existing regulatory burden and promises to be costly to maintain for both government and industry with no clear benefits or added value.

Recommendation 18: The proposal to develop a national registry of fixed sites containing undefined quantities of hazardous substances in excess of specified levels should not be included in CEPA on the grounds that it is duplicative, unmanageable and not cost-effective.

6.18 Recovery of Cost of Damages from Spills, Leaks & Other Such Incidents

Under the **Canada Shipping Act**, the owner of a ship may be liable for costs and expenses incurred to address oil pollution from the ship. Section 6.18 of the Government Response proposes to amend CEPA by including similar cost recovery provisions to deal with the environmental aspects of emergencies. This proposed amendment has extremely broad potential application, and Inco does not believe that such an amendment is necessary or appropriate. However, if these cost recovery provisions are to be included in CEPA it is vital that appropriate limitations and procedural safeguards (similar to those found in the **Canada Shipping Act**) be put in place to prevent abuse.

Recommendation 19: The proposal to introduce cost recovery provisions to deal with the environmental aspects of emergencies should be rejected; if, however, these cost recovery provisions are to be included in CEPA, appropriate limitations and procedural safeguards (similar to those found in the **Canada Shipping Act**) should be put in place to prevent abuse.

Chapter 8: CONTROLLING POLLUTION & WASTES

Inco is most concerned by several aspects of the various proposed amendments to CEPA intended to provide additional control for **international air pollution**. The proposal to enhance existing federal authorities to coerce provinces which are "**either not able or not willing** to make" regulations pursuant to Canada's current and future international commitments in this area by establishing a **framework** (for control of domestic sources of international air pollution) with related **timeliness** (and presumably **targets**) is particularly troubling.

Inco believes that there is a need for **increased federal/provincial consultation and direct provincial representation on Canadian delegations** negotiating international air agreements. The process used to develop and negotiate Canadian commitments for the UN Framework Convention on Climate Change has resulted in a significant gap between the commitment and reality. If the provinces were fully engaged and supportive of the commitments made by the federal government during international negotiations, there would be no need for legislation to force provinces to enact the necessary regulations. Such coercion is both intrusive and indicative of inadequate prior consultation.

With respect to **timeliness**, Inco also believes that it is extremely important that Canada take into account the positions of other members of the Conference of the Parties to international conventions such as the UN Framework Convention on Climate Change (FCCC) before adopting domestic commitments which are out of step with those adopted by our major competitors.

There is a careful balance to be struck between "leadership" in promoting progress internationally and attempting to define targets before the multilateral commitments are negotiated would put Canada "ahead of the curve" in terms of commitments to "**quantified emission reductions and targets (QUELROS)**", and behind, in terms of export markets.

If such power were included in CEPA, there is a need to clarify what constitutes an "**emergency**" which would require quick action to avoid the delays and abandon what we hope would be normal consultation to determine the cause for delay or "refusal" to enact legislation. Criteria are also need to determine at what point emissions should be deemed "**significant contributors**" and subject to extraordinary controls. Finally, the reservations mentioned earlier regarding the applicability of **emissions trading** in the Canadian context (insufficient traders/too "thin" a market) would also apply to this section.

Recommendation 20: The proposal to enlarge federal powers respecting provincial control of domestic sources of international air pollution should be dropped; alternatively, provisions should be added to ensure that federal measures to force provinces to enact legislation are assessed for their economic and sectoral implications and the results made public before such steps are taken.

Recommendation 21: Provincial approval of Canadian positions in advance of international environmental negotiations, as well as direct representation on all Canadian delegations, should be mandatory.

8.12 Waste Definition

Inco supports the Government's commitment to pursue a definition of waste in future international and domestic discussions which would clearly **distinguish between wastes for final disposal, recyclable materials and products**. However, Inco also believes this section is an appropriate area to repeat and reinforce the Government's stated commitment to **risk assessment**. It is troubling in that the entire section does not refer to the aspect of risk, as opposed to hazard, a factor which should be a key element of any decision regarding the phasing out or banning of a substance.

Recommendation 22: References to risk assessment and risk-based decision making should be included in Chapter 8 in relation to all proposals to reduce, phase out or ban hazardous substances.

8.13 Responsibilities of Users and Producers

It is not clear how the proposed sharing of responsibilities would be determined. Inco is concerned that this concept needs clarification, particularly in the area of how respective responsibility among multiple contributors to a single process or product, and ultimately, among multiple users, could be determined. References to the need to develop **methodology**, clarify **terms** and develop a **process** for consultation in determining **shared responsibility** should be introduced to this section for the reasons stated earlier.

8.15 Hazardous Wastes - New Requirement - Reduce/Phase-out Quantify of Hazardous Wastes Being Exported for Disposal

Inco is opposed to the proposal to reduce or eliminate the possibility of recourse to **waste treatment centres** located outside Canada. Inco is also concerned that this proposal does not take into account the full range of impacts that such a decision may have. Limiting access to the most cost-effective and environmentally sound treatment or disposal facility may have significant, adverse effects and serve to promote less than environmentally friendly solutions in Canada. Canada was a major proponent of the concept of disposal centres for hazardous waste during UNCED and Inco believes that a ban on transboundary movement of hazardous wastes is not warranted on ecological or economic grounds.

While Inco is pleased at the intent to exclude hazardous waste destined for **recycling** from this provision, we would prefer a more direct statement of support.

Recommendation 23: The proposal to introduce a new requirement to prohibit the export of waste for disposal should be rejected and CEPA should be amended to support the inclusion of transboundary movement of hazardous waste for disposal.

8.17 & 8.20 Hazardous Wastes & Non-Hazardous Wastes: New Authority to Ban & Control Exports & Imports

Inco is concerned that the basis for this new authority is overly intrusive and counter to the intent of the Basel Convention which provides for national governments to be the arbiters of whether a treatment facility is managed in an **"environmentally sound manner."** This is not within the purview of the federal government and would open Canadian facilities to similarly scrutiny from abroad. It also would entail significant new costs to conduct the relevant facility and site assessments outside Canadian borders. It may also be considered an intrusion on national sovereignty, including our own, if foreign governments assume similar responsibility.

Finally, Inco believes there is no justification for further control or monitoring of **interprovincial/territorial movements of hazardous wastes** beyond the existing provisions of the **Transportation of Dangerous Goods Act, 1992 (TDGA)**. The proposal in **8.20** to introduce further and separate reporting requirements will introduced further costs and regulatory overlap, when the existing process should be sufficient as a source of information for both levels of authority. These amendments also have the potential to discourage recycling and corporate investment across provincial boundaries which otherwise might occur.

Recommendation 24: Federal authority to ban and control the export and import of hazardous & non-hazardous wastes and to increase and alter reporting requirements under the TDGA should not be included in amendments to CEPA as not cost-effective, not consistent with the concept of environmental stewardship and likely to inhibit recycling and investment.

8.21 & 8.22 Implementation of a Cost Recovery System

Inco opposes the proposed introduction of **cost recovery** for an **unspecified range of expanded "services"** on the export, import and interprovincial/territorial movement of all types of wastes as excessive and unfair. Industry should not have to bear the cost of regulations it does not believe are in the national interest and which effectively constitute a hidden tax.

Recommendation 25: The proposal to introduce cost recovery for applications relating to all movements of hazardous and non-hazardous waste should be rejected.

8.25 & 8.27 Creation of a List of Wastes Authorized for Disposal in the Ocean & Justifying the Need for Ocean Disposal

Ocean disposal is frequently the most environmentally sound method available to dispose of wastes from mining operations located in coastal areas. Inco wishes to stress the urgency of early clarification of concerned that what constitutes "**contaminated inert geological material**" and will therefore qualify for ocean disposal and the need for **industry consultation in developing the list** of wastes approved for disposal. Inco is also disturbed by the possible costs associated with extensive research to justify marine disposal as the "environmentally preferable and practicable option" upon which a permit would be dependent. Inco believes that waste disposal is sufficiently addressed by existing environmental assessment provisions under CEAA and provincial legislation and that the introduction of such extensive requirements prior to approval and permitting will create unnecessary and costly project delays.

Recommendation 26: The proposed amendments concerning CEPA & Canada's Oceans should include:

- a. a clear definition of "uncontaminated inert inorganic material;"
- b. a requirement for consultation with land-based industries on new proposals for coastal zone management under CEPA, in particular with affected industries in development of the proposed List of Wastes Authorized for Disposal in the Ocean.

8.32 Granting of Ocean Disposal Permits - Notification & 10-day Objection Period

Inco believes that constraints should be placed on the federal authorities, as well as on industry and the public, in terms of the overall timeframe for review and approval or denial of a permit. In addition to the ten-day period established for public comment, Inco believes that, in order to avoid undue and costly project delays, limits should be set on the number of weeks which may elapse from the receipt of an industry request and public notice. Failure to respond within the prescribed time period should mean an automatic decision in favour of the applicant.

Recommendation 27: In addition to the 10-day objection period for public comment, a limit should be established, in consultation with industry, on the time allowed for federal officials to review the request for a permit before issuing

public notice which, if exceeded, would mean a decision, by default, in favour of the applicant.

Chapter 9: CONTROLLING TOXIC SUBSTANCES

9.1 Substances Meeting Persistence or Bioaccumulation or other Criteria

Inco supports the idea of more informed decision making for the control of substances which have been assessed using the principles contained in Section 11 of CEPA, based on better science and cost-benefit analysis. However, the introductory section (Prioritizing Substances for Action) to Chapter 9 does not give equal emphasis to the risk assessment as a critical component of the decision-making process. Inco believes that the pronounced emphasis on inherent toxicity is at odds with the Government's stated commitment to a two-step, risk-based decision-making process.

The original intent and conditions of Section 11 of CEPA should be respected. Environment Canada should review in detail the results of the Canada/EU workshop held in Brussels in December, 1995. The topics of biodegradation, persistence, bioaccumulation and biomagnification of metals and metal compounds was very thoroughly discussed and the conclusions of the workshop merit consideration in the review of CEPA.

Recommendation 28: Control of toxic substances should remain consistent with the original intent of Section 11 of CEPA and bioavailability must be considered as a factor in risk assessment.

9.2 Substances which have been banned, sunsetted or severely restricted in an OECD country or Canadian province

European countries do not base decisions on the concept of risk. Control measures adopted by other jurisdictions and intergovernmental agencies should not be adopted without careful risk assessment against Canadian circumstances. Inco is concerned that substances produced in Canada may be banned or restricted by other countries as a means of restricting the import of Canadian product. Substances should be assessed on their own merits in relation to Canadian circumstances, not those of other jurisdictions.

Recommendation 29: Control measures adopted by other countries should be used only as indicators of the need to assess the properties of a substance in relation to Canadian circumstances. Efforts should be made to ensure that bans and other measures proposed by intergovernmental agencies in which Canada is a participant, are based on risk and not used as disguised non-tariff trade barriers to restrict market access for Canadian products.

9.3 Substances that have otherwise been placed on the PSL through the Nomination Process provided through the current CEPA

Inco objects to the process whereby some substances, particularly metals and their compounds, are assessed as a class or group, rather than on a substance-by-substance basis. In the case of metals and their compounds, it is clear that each metal has different properties, and each compound of a particular metal has different properties. Any risk assessment process which does not take into account these differences cannot be considered good science. In the case of nickel, improper assessment could have significant economic implications for the mining sector and the national economic interest. The reference to group or class assessment should be removed from this section and be replaced by concept of substance-by-substance assessment throughout CEPA.

Recommendation 30: Unwarranted group or class assessments should not be allowed as part of the process for determining which substances are toxic and in need of control. Metals and their compounds have to be assessed on a species-by-species basis.

9.5 Deciding which substances are toxic under CEPA

Inco is strongly opposed to any deviation from the original intent of Section 11 of CEPA. Much of the text in this section of the Government Response supports this position. Inco agrees that "the Government must consider the risk posed by substances before rendering a conclusion" and that "Understanding the nature and extent of the risk enables the Government to prioritize dangers to human health and the environment and to focus controls where they will have the greatest benefit." The proposal to eliminate risk assessment for Track 1 substances which are both persistent and bioaccumulate is not justified or consistent with the overall commitment of the Government to scientific risk-based decision making.

Recommendation 31: The proposal to eliminate risk assessment for Track 1 substances should be dropped.

9.10 "Stop-the-clock" Provision

Inco agrees that there should be limits to the time in which substances are to be assessed by the government, once data is available. However, if, no decision is published within the agreed timeframe, Inco recommends introducing a default provision that would mean an automatic ruling in favour of the affected party.

Recommendation 32: If no decision is published on the testing of substances on the Priority Substances List within the agreed timeframe, the decision should be deemed to be in favour of the affected party.

9.14 & 9.18 Board of Review

Under CEPA, a Board of Review may be established to enquire into matters such as the nature and extent of the danger posed by a particular substance concerning which a decision is made or an order or regulation is proposed. The decision regarding whether to establish a Board of Review is at the Minister's discretion. Historically, while several Notices of Objection have been filed, the Minister has never accepted such a request and the Board of Review has never been established.

The Board of Review is an important appeal mechanism allowing for the evaluation of technical decisions and scientific materials which underlie potentially far-reaching decisions, such as whether to add a substance to the Toxic Substances List. Provide that appropriate limitations and procedural safeguards are established to ensure that this appeal mechanism is not abused, CEPA should be amended so that the establishment of a Board of Review is mandatory. This will ensure that access to this important appeal mechanism is guaranteed in certain circumstances, particularly if there is a difference in opinion on the underlying science used in the assessments.

Recommendation 33: CEPA should be amended so that the establishment of a Board of Review is mandatory and appropriate limitations and procedural safeguards are established to ensure that this appeal mechanism is not abused.

Cory Harris
Chair of the Guelph Student Chapter,
Air and Waste Management Association,
Thornborough Building,
University of Guelph, Guelph, Ontario,
N1G 2W1

Rec'd - DOU - DOE

38953

MAR 25 1996

Regu - UCM - MDE

The Honourable Sergio Marchi
Minister of the Environment,
Terrasses de la Chaudière,
10 Wellington Street,
Hull, Quebec,
K1A 0H3
March 19, 1996

0-1025-1
0-1165-34/
5157

Dear Mr. Marchi,

I am writing this letter to convey my disappointment regarding the proposed revisions to the Canadian Environmental Protection Act (CEPA). The changes that are planned only address a fraction of the 141 recommendations made by the Parliamentary Standing Committee on Environment and Sustainable Development. Why were so many concerns overlooked? As you can see from the enclosed petition, Canadians feel strongly about this issue and request effective action.

I urge you, Mr. Marchi, to assist the federal government in taking a strong leadership role in environmental protection by setting strong environmental standards. Canadians deserve good health and a protected environment and the proposed changes to CEPA will not ensure this. Please phase out the use and release of toxic and persistent chemicals that adversely affect wildlife as well as human health.

The issue of biotechnology also requires higher priority on the agenda of the federal government. Please add a new section to CEPA, to be administered by Health Canada and Environment Canada, which would apply to all biotechnology products which may enter the environment.

Canadians have a right to know pollutant releases from all industries in Canada, regardless of the size of the plant or the number of employees. Currently, Canadians have very limited access to both government and private sector information regarding pollutant releases. Please assist in the development of an Environmental Bill of Rights which would include the right to intervene when the environment is being harmed.

Finally, I urge you, Mr. Marchi, to enact provisions which would direct all sectors of industry to *prevent*, rather than *control*, the generation of pollutants. Please incorporate the Standing Committee's recommendations into the new CEPA as the views expressed by the committee represent the vast majority of Canadians. Urgent action regarding these issues would be greatly appreciated.

Sincerely,

Cory Harris

Cory Harris

Industrial Biotechnology Association of Canada
Association canadienne de l'industrie de la biotechnologie

130 Albert St., Suite 420
Ottawa, Ontario
Canada K1P 5G4
Telephone: (613) 230-5585
Facsimile: (613) 233-7541

IBAC / ACIB

March 21 1996

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Connaught Laboratories Ltd.

Rec'd-DCU-DOE

APR 1 1996

Regu-UCM-MDE

0-1025-31

139212

The Honourable Sergio Marchi
Minister of the Environment
Room 101-S, Centre Block
House of Commons,
Ottawa, Ont.
K1A 0A6

Re: CEPA Review, The Government Response

Dear Minister Marchi,

The Industrial Biotechnology Association of Canada (IBAC) is pleased to contribute to the discussion process currently under way to renew the Canadian Environmental Protection Act, and is encouraged by the Canadian Government response to the CEPA Report and its stated wish "to ensure that Canada has a regulatory regime in place which promotes innovation, encourages investment in Biotechnology, supports technology transfer and places Canadians at a competitive advantage" (Ch. 7, p. 51, Government Response). We see this as being consistent with the current overall government approach to job creation, while maintaining an internationally harmonized regulatory framework. In support of a renewed CEPA, IBAC offers the following comments.

Biotechnology is a tool that has been used for many years, and has continued to develop in many fields of research and industry: to develop new regulations specific to this "tool" is perhaps a misunderstanding of the science and the technology, when the various areas of activity utilizing this technology have been covered systematically by the various government regulatory agencies as applications developed. It is important to underline the points made in the report of the Government response that *"these technologies are being used to develop new medicines, to improve yields from fish stocks, forest growth and agricultural crops, to promote energy production from biological sources, to improve treatment of liquid effluents and to assist in cleanup of wastes and the environment"*.

IBAC strongly supports the further statement in the Government response report, that "as a principle, there would be no overlap and duplication in regulating products

of biotechnology. However when it goes on to say that "it is intended that CEPA would serve as the "safety net" for those areas that are not covered by other federal Acts" it leads directly to the Departmental overlap which plagued the original CEPA: we are seriously concerned that the formal establishment of such a concept could lead to the establishment of a net for purposes other than safety. We wish to underline that the federal department responsible for the product should oversee all aspects of the product gaining help from Environment Canada where appropriate. Thus Agriculture and Agri-Food Canada should oversee agricultural products; Health Canada to oversee novel food products and the Ministry of Natural Resources oversee Forestry Products. CEPA should remain responsible and restrict itself to products not covered by other Acts.

Under section 7.2, a separate Part of CEPA is proposed to deal specifically with **living products of biotechnology**, and in section 7.3 it states that "the section would establish criteria for biotechnology products based on the existing criteria for toxicity under s.11 of CEPA". Industry will want to participate in the consultation process for the establishment of these criteria, since our experience since 1989 is that CEPA regulators do not always understand the industrial implications of their well meant regulatory proposals. We would therefore wish that **serious consideration be given to a special stakeholder conference**, similar to that in December 1994: a number of new issues such as "living products" need review before any regulations proceed to Gazette I.

The current Federal Framework supports a stringent, well-defined, predictable, efficient and defensible regulatory system for products of biotechnology. Canada's regulatory system has been developed in an open and consultative way and is recognized as a model internationally. Any deviation of this approach will call Canada's credibility into question and our leadership position will be compromised.

Consideration of Additional Amendments: (p.52)

Cost-Recovery/Permits: (section 7.5) Current provisions within CEPA relative to the importation, manufacture and use of substances are not set out in terms of the government issuing permits. Instead they are described in terms of notification requirements. For the sake of consistency within the Act on this point, **IBAC recommends** that authority provided in the Act to deal with biotechnology activities regulated under CEPA should not be in terms of "issuing permits" but should only be in terms of providing for notification requirements, as is currently the case in Part II.

International Commitments: IBAC is concerned about the comment under section 7.6 about the "authority, in the revised CEPA, to make regulations as necessary to complement existing federal authorities to implement binding agreements made under international conventions and protocols for products where regulations do not exist under other federal Acts". Again we would see this as possibly duplicating government efforts under existing Federal Acts, where the subject expertise already exists in the federal departments responsible.

Development of a Biotechnology Science Base: IBAC supports the establishment of a "national science base for biotechnology and its applications" but for reasons already stated, IBAC is concerned about restricting this to a renewed CEPA, as the current expertise of existing federal departments would not be maximized but perhaps artificially redistributed, if one recalls our opening comment that biotechnology is a tool, an enabling technology, used over many years by a large number of experts.

Right to sue: (s. 3.9) in our opinion, the "right to sue" should remain with the Government and not be abrogated to the public. The elected officials of the Government are best placed to represent the interests of the public and must have the adequate mechanisms in place to take action for violation of CEPA or its regulations. Abrogation of this responsibility would create an environment for frivolous action or mischief.

We provide these comments in a constructive discussion context and remain available to review with you and your officials an internationally harmonized area of future technology growth in Canada. A great deal has been accomplished since the initial discussions of 1987, but we also feel that a great deal remains to be done.

Yours truly

THE INDUSTRIAL BIOTECHNOLOGY ASSOCIATION OF CANADA



Roger A. Perrault MD
President

- c.c. The Honourable John Manley, Minister of Industry
The Honourable David Dingwall, Minister of Health
The Honourable Ralph Goodale, Minister of Agriculture and AgriFood
The Honourable Anne McLellan, Minister of Natural Resources
Mr. Ian Lennox, President of Canadian Chemical Advisory Council
Mr. Gordon Lloyd, President, Canadian Chemical Producers Association

Esso Imperial Oil

Imperial Oil Limited
111 St. Clair Avenue West
Toronto, Ontario
Canada M5W 1K3

Robert B. Peterson
Chairman, President and
Chief Executive Officer

March 21, 1996

The Honourable Sergio Marchi, P.C., MP
Minister of the Environment
Room 507, Confederation
House of Commons
Ottawa, Ontario
K1A 0A6

0-1025-1
0-1165-36/5157

Dear Minister:

In recent weeks, Imperial Oil has contributed to industry association reviews of the government's white paper on a renewed Canadian Environmental Protection Act (CEPA). We recognize the importance of reviewing and modifying the CEPA to ensure it is consistent with Canadians' expectations on environmental management. Many aspects of the Proposal make sense but we believe there are some elements that require reconsideration.

We are both committed to a risk-based approach to decision-making. Your Proposal acknowledges this and in our view the Act should incorporate the principle that decisions will be based on sound science, the consideration of risk and the determination that benefits to society justify the costs. Risk-based decision making provides the means of striking the right balance between environmental and economic priorities.

From a legal perspective we believe the civil "right to sue" provisions are unnecessary and the inclusion of administrative monitoring penalties and negotiated settlements could lead to lower standards of proof and evidentiary safeguards. Lastly, the inclusion of non-hazardous wastes in the Act is unnecessary as it is adequately addressed within provincial jurisdictions.

Working together, government and industry can ensure economic development consistent with sound environmental management. We need to ensure the renewed CEPA achieves our common goal.

Sincerely,

Bob Peterson

DESMITH/DOC

cc. The Honourable David Dingwall, Minister of Health
The Honourable Anne McLellan, Minister of Natural Resources
The Honourable John Manley, Minister of Industry
The Honourable Paul Martin, Minister of Finance
The Honourable Lloyd Axworthy, Minister of Foreign Affairs
The Honourable David Andersen, Minister of Transport
The Honourable Marcel Massé, President of the Treasury Board
Mr. Mel Cappe, Deputy Minister, Environment Canada

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

HENRI Jacob 9/98

Address:

1035, St. Philippe Street

Dorval (Q.B.) Qc

J-7P 4N7.

CEPA

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Gerald &
Carol Jacquard

Address:

Tusket Falls

Var. Co. N S

Bow 3MO

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Carlene Jensen Carlene Jensen

Address: RR 3 Middlebn

Anna. Co., U.S.

BOS IPO

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd-DCU-DOE

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Recy-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Kurtis Kalinowski

Address: Box 682

Gull Lake, SK

SON 1A0

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Regu-UCM-DOE

MAR 25 1996

Regu-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Serena Keedy

Address: RR-1 Wilmot NS BOP 1W0

(902) 825-6515.

=== COVER PAGE ===

TO: Hon. Sergio Marchi, Minister of the Environment

FAX: 819 - 953 -3457

MAR 22 11 10 AM '95

FROM: S (ZIGGY) KLEINAU

FAX: 519-795-7725

TEL: 519-795-7725

RECEIVED
MINISTER OF
THE ENVIRONMENT

139032

0-1025-1
0-1165-36/S157

o PAGE[8] TO FOLLOW

COMMENT:

Re: The Government's response to the June 1995 Report
of the Standing Committee on Environment and Sustainable
Development: 'IT'S ABOUT OUR HEALTH!'.

Dear Minister,

I am thoroughly dismayed by the proposals
made by your and other ministries in regard to the new Canadian
Environmental Protection Act (CEA).

Instead of taking a leadership in environmental pro-
tection by setting **STRONG ENVIRONMENTAL STANDARDS** most of the
valuable recommendations of the Committee have been watered down!

The use and release of chemicals that persist in the
environment, causing unpredictable damage through build-up in
wildlife and humans, should be banned or speedily phased out!

The Canadian public should have the right to know who
is releasing toxic pollutants into the environment, including
substances sent off-site for incineration. Public participation
and consultation should be a constitutional right enshrined in
a **CANADIAN ENVIRONMENTAL BILL OF RIGHTS!**

Above all the call of the Committee for the application
of the PRECAUTIONARY PRINCIPLE should be followed in EVERY
PRODUCT INVESTIGATION and TESTING!!!

Please acknowledge my correspondence and respond to
my proposals in a timely manner!

Yours,

sincerely,

Suzanne K. Kleinau
A CONCERNED and DISMAYED
CANADIAN CITIZEN!

Ed-DCU-DOE

MAR 26 1995

Regu-UCM-MDE

The Honourable Sergio Marchi
Minister of the Environment.

London, Ontario, March 15, 1996
0-1025-1

Dear Minister,

138821

As a member of the Federation of Ontario Naturalists and a member of the Bruce Trail Association - I am concerned about the proposed reforms to the Canadian Environmental Protection Act (CEPA). A weakening environmental protection at a time growing evidence links pollution to rising incidences of cancer both - in women and men and learning disabilities in children is unacceptable. Strong leadership in setting environmental standards; the banning of chemicals that persist in the environment and the build-up in humans and animals should be phased out. Canadians need a strong Environmental Bill of Rights which included the right to intervene when harm is done to the environment and the right to sue polluters; Canadians should have the right to know who the polluters are and what is being released to the environment; human health, safety and environmental protection should be the priority of the government in the regulation of biotechnology. A new section should be added to CEPA to be administered by Health Canada and Environment Canada, which applies to all biotechnology products which may enter the environment; and provisions must be enacted requiring all sections of society to prevent the use and generation of pollutants rather than to ~~protect~~ control them.

These are the key points I like to see implemented

Respectfully Yours

W.H. (Kees) Koopman 445 Dalhousie Drive
London (Ont) N6K 1M8

Please excuse the handwritten
aspect - I only just received
the notification.

139233
RECEIVED
MINISTER OF
THE ENVIRONMENT
MAR 22 5 35 PM '96

070257
D. Kyles 0-1025-31
Suite 833
2255 B Queen St. E
TORONTO, Ont.
M4E 1G3
March 22/96

Sergio Marchi - Fax 819 953 3457
P.M. J. Chretien - Fax 613 941 6900

e: The Federal Government's CEPA reform proposal

We now have one of the poorest environmental
policy and regulations ^{systems} in the "industrial" world,
and you want to make it worse.

While Europe and Japan etc. etc. are tightening
their regulations and putting more and more
controls on pollutants - Canada now wants
to "deregulate". What kind of a country do
you want? What % of our GDP do you
want to spend on health problems?

Strong env. regs. have created tremendous
technological growth and job opportunities in
other countries. A look at the U.S. bill S03
will demonstrate this aptly. It is up to
the Federal Government to lead the way
with strong, enforceable laws to protect
the environment and the health of Canadians.

Job opportunities and reduced manufacturing and operating costs will result - as they have in all other countries where environmental concerns are a priority. We are missing employment opportunities - many Canadian firms and individuals ~~are~~ ^{are} going to the U.S. to find work in environmental industry jobs because there is no need for them here.

To allow the release of persistent, toxic substances into the environment is irresponsible! The saddest part is that it is not necessary either. Cancers and reproductive problems are now directly linked to persistent toxics which are still being discharged into the environment in Canada and it must stop. The majority of the Canadian public wants strong environmental legislation. Giving in to a handful of industrial lobbyists makes ~~the~~ a mockery of free word democracy and leaves the taxpayer with health costs and possible lawsuit costs which are not necessary and which they can't afford.

Over the last couple of years I have become embarrassed to say that I am a Canadian. I am beginning to see a future in a country that puts the almighty dollar ahead of health, a decent standard of living, a diverse and expansive natural ecosystem and the peace of mind that people deserve to have. ^{While the oil and coal representatives are looking out for them.}

Rec'd - DCU - DOE

MAR 29 1996

Regu - UCM - MDE

L A I D L A W

39183

LAIDLAW INC.

2551 NORTH SERPENT ROAD, P.O. BOX 5025, BURLINGTON, ONTARIO, CANADA L7R 3Y8 (905) 336-1800 FAX 905 336-3976

March 20, 1996.

Hon. Sergio Marchi
Minister of the Environment
10 Wellington St.
terrasse de la Chancire
Hull, Quebec.
K1A 0H3

0-1025-31

Dear Minister Marchi:

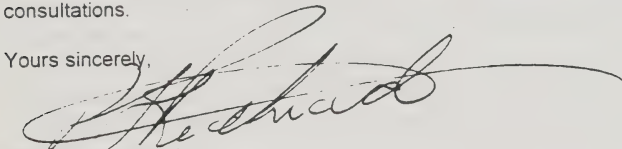
Laidlaw would like to acknowledge the effort by all the government department staff that went into the CEPA Review: The Government Response. On November 11th, 1995, we wrote to then Environment Minister Copps, and registered our concerns about some of the recommendations in the "Caccia" Report. The CEPA Review: Government Response, while it does not correct all problems we had with "Its About Our Health", it goes a long way to addressing many of them.

In our opinion, the recommendations can still stand some modifications which we will suggest, but on the whole, they build on the sustainable development attitudes and environmental policies already in place in Canada.

Two areas where we feel the Government Response requires significant revision are: one, Chapter 6, where the definition of pollution prevention excludes off-site recycling, and two, the sections in Chapter 8 concerning the management of hazardous and non-hazardous wastes. Our detailed submission is attached.

Thank you for the opportunity to comment. We look forward to participating in the next round of consultations.

Yours sincerely,



Robert J. Redhead
Director, Government Affairs

cc: Hon. Sheila Copps, Deputy Prime Minister & Heritage Minister
Hon. Lloyd Axworthy, Minister of Foreign Affairs
Hon. David Dingwall, Minister of Health
Hon. Art Eggleton, Minister, International Trade
Hon. John Manley, Minister, Industry Canada
Hon. Anne McLellan, Minister, Natural Resources of Canada
Hon. Marcel Massé, President - Treasury Board
Mel Cappe, Deputy Minister, Environment Canada
Marjorie Loveys, Office of the Prime Minister
Jim Bullock, President & CEO Laidlaw

Overview

The aspects of the Government Response that Laidlaw sees as positive and supports include:

- the concept of sustainable development is recognized in the Response and this philosophy is generally included throughout the document,
- overall the Response strikes a balance, integrating economic and environmental considerations in a way that relieves many concerns raised by us and others in the business community, about the potential for negative impact on investment that would have resulted from the implementation of the recommendation in the Parliamentary Committee Report - "Its About Our Health.....",
- the role of "voluntary" initiatives and economic instruments as complements to good regulations in achieving environmental protection is clearly recognized and supported,
- the role of science and economics in decision making in CEPA is reinforced,
- the risk assessment approach is recognized as the foundation for the Government's approach to toxic chemicals and their management, the Toxics Substances Management Policy is also recognized
- the need for continuous improvement in environmental performance is stressed in the context of moving forward, recognizing that significant progress has been made to date,

- the provisions in the Response generally set a tone of partnership, working with the provinces to rationalize and harmonize the federal and provincial environmental management framework.

The Response generally provides sound arguments for amending CEPA, particularly those listed above. We feel a number of improvements can be made to the recommendations, for example:

- constraints are required around the cost recovery proposals such as recognizing other government authorities, policies and the competitiveness implications of any cost recovery actions;
- the requirements for a regular seven year review of CEPA should be discretionary and generally provide for continuous improvement of the statute and not a major rewrite;
- the proposed "right to sue" provisions should be harmonized with the Ontario Environmental Bill of Rights (EBR) provisions re. rights, remedies and safeguards;
- more protection and safeguards are required in the proposed information gathering and confidentiality provisions, any companies EMS under ISO 14000 should be protected;
- Laidlaw recognizes the Federal definition of pollution prevention, but we submit that the interpretation of that definition must include reuse and recycling, no matter where it is carried out and this interpretation should be incorporated into CEPA;

- the proposed model pollution prevention plans should be a guideline and not a statutory requirement, in keeping with innovations driving philosophy of Pollution Prevention;
- the provisions for bans and enhanced interprovincial and international controls, proposed for the Federal Government in the hazardous and non-hazardous waste area must be reconsidered - as presented they create overlap and duplication with provinces and give broad discretionary powers to Environment Canada staff;
- Laidlaw strongly objects to the concept of Canadian self-sufficiency in waste management, we operate in a North American market under NAFTA and that should be recognized. The impacts of environmental pollutants do not recognize political boundaries;
- cost recovery provisions should not be incorporated into CEPA.

Chapter 1 - Guiding Principles

Laidlaw generally supports the recommendations in Chapter 1 with respect to balanced sustainable development, pollution prevention, ecosystem approach, biological diversity, intergovernmental cooperation, science, the precautionary principle and economic responsibility.

Laidlaw strongly supports Recommendation 1.3 with respect to incorporating an ecosystem approach into CEPA, and Recommendation 1.6 and 1.7 with respect to recognizing the strong role that science must play in CEPA. The scientific community

has the responsibility to contribute to responsible, defensible standards. We also strongly support Recommendation 1.8 with respect to economic responsibility and the proposals that the Act reinforce the role of economics as a basis for decision making under CEPA.

Laidlaw generally supports Recommendation 1.2, pollution prevention and the proposed definition but we recommend that it should be clarified that this definition includes reuse and recycling no matter where it occurs. This issue will be addressed in more detail in our comments on the pollution prevention chapter (Chapter 6).

We support Recommendation 1.5 with respect to intergovernmental cooperation, but recommend that this should be extended beyond the Canadian domestic context to also acknowledge the increasing globalization of many environmental issues and the need for continued and increased global cooperation given the impact that international agreements have on domestic and North American markets

Chapter 2 - Administration

With respect to economic instruments, Laidlaw supports Recommendation 2.13 and agrees that proposals for the use of measures such as environmental taxes and charges or financial incentives in the form of tax measures should remain the responsibility of the Minister of Finance. We would also recommend that a cautious approach be taken to developing and implementing economic instruments. Before endorsing particular economic instruments, governments should perform thorough

benefit-cost analysis on a case-by-case basis, and weigh their economic, social, trade and competitiveness impacts against their intended environmental outcomes.

Laidlaw supports the guiding principle of intergovernmental cooperation as set out in the Government Response and we believe that the provisions in Chapter 2 for equivalency and administrative agreements and general agreements for environmental management will be important in this respect.

We question the provisions in Recommendations 2.9 and 2.12 for these agreements to have five year sunset clauses. We recommend that it would be more appropriate to provide that the agreements should be reviewed every five years, with a view to change if necessary. This would be more efficient and require fewer federal and provincial government resources. This approach would also be seen by industry as providing a more stable and predictable framework, which is important for investment decisions.

Recommendation 2.16 provides for a review of CEPA every seven years. Laidlaw supports mandated reviews, in principle, but we feel it is important that there not be a prescribed rewrite of the Act every seven years. The experience with the current CEPA Review clearly illustrates that dealing with proposals for a major rewrite is very resource intensive for all stakeholders. Stability and predictability is required for carrying on business and this is difficult to provide if fundamental changes to CEPA were possible every seven years. Laidlaw recommends that Recommendation 2.16 be

modified to provide for review every seven years, if deemed necessary, and that continuous improvement be the primary vehicle to ensure that CEPA remains current and effective.

Recommendation 2.17 proposes to amend CEPA to allow for cost recovery. It is our understanding that the Financial Administration Act already allows recovery for costs of services that are provided by the Government. This being the case, Laidlaw recommends that cost recovery, where it is appropriate, should be provided through the existing authorities and not by amending CEPA in this area. CEPA must never become a vehicle for taxation. We are of the belief that general taxation typically covers expenditures made on behalf of the common good and this should continue to be the case.

Chapter 3 - Public Participation

Laidlaw generally, supports in principle, the recommendations in this chapter. However we believe that before they are implemented, more analysis than is provided for in the Government Response is required in a number of areas.

With respect to access to information by the public through an electronic registry and Recommendations 3.1 to 3.3, We note the following:

- Recommendations 3.1 proposes three options for an electronic registry. Laidlaw recommends the third option of creating the registry through a policy decision without enshrining it in law. Issues as to what should and what should not be

included in the registry would also be better dealt with through policy decisions rather than by creating legal requirements at this time.

- There is no discussion in the Response about electronic registry with respect to protecting confidential information . We presume that this would be covered by the general confidentiality provisions that are provided currently in the Canadian Environmental Protection Act and in the Access to Information Act.

With respect to the right to sue provisions and Recommendation 3.9, Laidlaw recommends that before proceeding with the recommendation to incorporate right to sue provisions in CEPA, Government should ensure that this provision is not redundant given that the Government has already provided for an Environmental Auditor General.

If an analysis supports proceeding with incorporating a right to sue within CEPA, this should be modelled on the Ontario Environment Bill of Rights as mentioned earlier. Laidlaw recommends that all the safeguards, rights and remedies set out in the current Ontario EBR right-to-sue provisions should be incorporated into the renewed CEPA. The Ontario Legislation was developed through extensive consultation involving all stakeholders and its provisions are all clearly relevant to the renewed CEPA. It would be a waste of resources to repeat the detailed consultations that took place in Ontario. To adopt a different approach would ignore the Ontario consensus process and would

be inconsistent with the Government's stated objective of intergovernmental cooperation and coordination of environmental measures.

With respect to a civil remedy for environmental risk, Laidlaw strongly supports the Government conclusions at page 27 of the Response that the recommendation contained in the Committee Report deviates from Canada's common law convention of civil liability and should not be incorporated into CEPA.

Laidlaw also supports the conclusion in the Government Response as set out in Recommendation 3.10 that incorporating a right to prosecute in CEPA as proposed in the Standing Committee Report should be rejected.

Under the heading of Other Public Rights, the government is seeking comments on intervenor funding for approvals before Boards of Review. Laidlaw supports the provision of participant funding for those who are prepared to contribute to an open review of a proposal, but are not in favour of intervenor funding provided in law to expressly prepare for hearings. We prefer, instead, processes that encourage early engagement of interested and affected parties and resolution of concerns outside formal process.

Chapter 6 - Pollution Prevention

Laidlaw accepts the definition of pollution prevention that is referred to in the Response and is set out in the document "Pollution Prevention - A Federal Strategy for Action". However, we strongly disagree with the interpretation of this definition that excludes off site reuse and recycling. We recommend that the government's pollution prevention definition can and should be interpreted to include reuse and recycling regardless of where it occurs. Both activities are important to shifting the focus from cleaning up pollution to preventing it in the first place, which is the Government's stated objective. As is explained in the Government Response, the goal of pollution prevention is "to turn thinking away from pollution control and waste treatment as preferred mechanisms for protecting the environment". In pursuing this objective it is impractical, as well as wrong for the environment and wrong for the economy, to exclude off site reuse and recycling as appropriate measures.

Actions by our customer such as product substitution and producing products more efficiently (so that less material is used and/or less byproduct/waste is created) are part of preventing pollution. So is reuse and recycling of materials that otherwise would be waste or would require treatment. Many manufacturing residues for one operation are often the raw materials for another type of operation, both within a single plant or between different plants in the same or different industrial sectors. Also, more and more, off site reuse and recycling are an important part of product stewardship, as

companies assume responsibilities for the environmental consequences of a product throughout its life cycle. Any concerns that reuse and recycling are less environmentally and/or economically efficient than steps to produce products more efficiently or product substitution are addressed by the Federal Government's definition of pollution prevention requiring that it "reduce overall risk to human health or the environment".

The current Federal Government definition of pollution prevention provides for this risk base approach but the Interpretation that has been adopted should be changed to allow for reuse and recycling.

The ISO Environmental Management Systems (EMS) initiative has included reuse and recycling in its interpretation of pollution prevention. For the Canadian Government to apply a different approach may impede ISO EMS implementation which would be contrary to government objectives.

To ensure that this issue of including reuse and recycling is clearly addressed in any legislated definition of pollution prevention. Laidlaw recommends that the definition currently adopted by the Federal Government should be modified to be:

Pollution Prevention means use of processes, practices, materials, products or energy that avoid or minimize the creation of pollutants and waste in ways that reduce overall risk to human health or the environment in the most economically and environmentally efficient manner and which may include recycling, reuse,

energy recovery, process changes, in plant control mechanisms, efficient use of resources and material substitution.

For interpretation purposes, this definition or an official interpretation of it should also specify that "pollution" is created only when a substance is released into the environment and a substance becomes a "waste" only when it enters the final disposal facility. We believe that these clarifications are consistent with the Government's "Pollution Prevention Strategy for Action".

If this approach, including reuse and recycling within pollution prevention is adopted, Recommendation 4.7 would need to be revised to describe pollution prevention as including reuse and recycling.

Chapter 8 - Reduction of Hazardous Waste and Non-Hazardous Waste

Laidlaw finds this to be the least considered section of Government Response. While most of the Government Response seems to recognize the need for cooperation with the provinces and moving away from overlap and duplication and the need for a generally less interventionist approach to environmental management, many of the recommendations with respect to hazardous and non-hazardous wastes provide for a larger role for the federal government. We are surprised at the inclusion of the reference to Canadian self-sufficiency for hazardous waste management when regional solutions within Canada and the U.S. are available. This protection and approach is inconsistent with NAFTA and the North American nature of the marketplace.

Recommendation 8.12. Laidlaw supports the CCME current efforts to establishing a waste definition which distinguishes among waste for final disposal, recyclable materials and products. We suggest this approach be taken when developing a definition of waste in a renewed CEPA.

Recommendation 8.14, hazardous waste, Laidlaw is not alone in being uncertain about exactly what this section on responsibilities of users and producers, means. We agree that producers and users of materials should be responsible for their own wastes. We provide the services that facilitate this facet of product stewardship. We support our customers position that it is inappropriate to legislate a product stewardship requirement into CEPA as a general obligation. This would lead to an unwarranted level of government intervention in the complex workings of the marketplace. This issue should be dealt with on the same basis as the Government has put forward for pollution prevention planning, namely that it should become a "self-sustaining business practice rather than a regulatory burden on industry and an enforcement burden on governments".

It is unclear if the Government (Environment Canada) will consider energy recovery as a reduction or recycle option. We are concerned about the requirement for waste management firms to prepare the plans. By the very nature of the business we are in, materials which we manage and export are often

wastes which have no reuse or recycle options remaining within its general political region. Clearly, there has been no consideration of the waste management industry role in these processes by those who drafted this section. Encouraging voluntary approaches, backstopped by regulation, is what should be considered

Recommendation 8.15, hazardous wastes - reduce/phase-out. Laidlaw suggests that this recommendation should not be carried forward. We believe that the general guiding principle of Canadian self-sufficiency in waste disposal does not make environmental or economic sense. We believe, contrary to what is implied in the Government Response, there are no international obligations that would require Canada to adopt such self-sufficiency. The focus should be to ensure wastes are managed in the best way possible using all resources available to generators. Regional management between Canada and the U.S. is currently provided for under Canada/U.S. agreements and is also supported under international principles such as, Agenda 21. We understand that one of the Canadian objectives at Rio (in Chapter 20 Environmentally Sound Management of Hazardous Wastes of Agenda 21) was to obtain international support of the principle for sharing environmentally sound facilities on a regional basis. This objective was successfully achieved as Chapter 20 provides for transboundary hazardous waste movement to take place on environmental and economic grounds and based on agreements between the states concerned. That is

the case with respect to Canada and the U.S. and current practices should continue to be supported by government policy.

Laidlaw operates in a North American market and utilizes appropriate treatment and disposal facilities according to the nature of the byproduct to be managed. In many cases, the most environmentally sound location is not in close proximity to the generator. Hence, political boundaries that are not respected by pollutants should not prevent their proper management. CEPA, quite correctly recognizes that the impact of pollution on the environment respects no political boundaries. For similar reasons, the solution to environmental problems should not be inhibited by political boundaries. The environment should not be denied the benefit of borderless solutions.

Recommendation 8.17, New Authority to Control Exports and Imports. It appears that the government of Canada (Environment Canada) will set themselves up as the agency determining what is "environmentally sound management". On what criteria will this assessment be based? We would hope that any decisions of this nature would be technically and economically based as opposed to politically based. All decisions and any rules must be based on sound defensible scientific fact not on presumptions, assumptions or perceptions. Public and regulated community should be able to challenge such decisions

With respect to Recommendation 8.18, Laidlaw fails to see the justification for additional authority within the CEPA for the Government to control export and import into Canada of non-hazardous solid waste. If this power were to be restricted to circumstances that involved meeting Canada's obligations under international agreements, the provision would be appropriate. Otherwise, there is no basis for an enhanced Federal Government role with respect to import and export of non-hazardous wastes and the additional costs that this would entail. Bilateral agreements should be adequate between consenting countries. EDI can be used to exchange needed information

Under Recommendation 8.20 re. control of interprovincial shipments, if the Federal Government is to have these proposed powers, Laidlaw recommends the legislation should provide that they should only be able to be exercised at the request of an affected province. It is not necessary for Environment Canada, to take over the manifest system from TDGA for this purpose. One of the objectives put forward to promote Recommendation 8.20 in the Government Response is the desirability of harmonization. This has been a long term objective with respect to waste manifest systems. Substantive progress has been made and currently there is nearly a uniform approach in Canada. We agree that further improvement is possible and desirable. However we believe that this can be done on the basis of national cooperation between the governments without a need for the Federal government to adopt additional federal

powers in this area. There is no reason to believe such additional power will promote harmonization.

It appears that Environment Canada will continue to require receiving jurisdictions to declare consent to the import or export of hazardous wastes. We are concerned that the provinces, and in particular Ontario agrees to perform these requirements. In the past, we have had every indication from Ontario that they have no interest in participating in this activity and consider it an excessive regulatory and legislative burden.

With respect to Recommendations 8.21 and 8.22, Laidlaw recommends that special cost recovery provisions should not be provided in this area. We do not believe that the Federal Government should become more involved in regulating the movement of waste within Canada or in controlling the export and import of non-hazardous solid waste. The concern about transboundary movement of MSW is a political one, not an environmental one. This is not an activity that benefits the service provider or generator, therefore information gathering could lead to the creation of unnecessary, additional bureaucracy that would not stand the test of special service and sensibly, a political need. Monitoring any activity for the purpose of gathering information for policy decisions benefits all Canadians. We are prepared to participate in the solution to the political problems, but do not support being "taxed" to do so.

A Response to Changes Proposed in the Canadian Environmental Protection Act:

RECEIVED - REÇU
PPS / SPE

MAR 20 1996

CEPA REVIEW OFFICE
1100 DEL'EXAMEN DEL

For many years as a concerned citizen and Physiotherapist, I have been learning more and more about the need to limit dioxins in our environment, mainly because of their ability to interfere with the functioning of our endocrine systems. So I am encouraged by the intent of the new CEPA regarding the aim to eliminate persistent and bio-accumulative toxic substances, i.e. at source. I am also encouraged that great progress has been made in reducing toxic effluent, in particularly the dioxins from pulp and paper plants, and that wood preservatives are much 'cleaner' than they used to be regarding dioxin contaminants. However, widespread use of the herbicide 2,4-D continues and, according to Environment Canada, it is the second largest chemical source of dioxins. So 2,4-D should, I think, be of concern. However, its regulation under the Pest Control Act, shields it from potential classification as a CEPA-toxic Track 1 substance, appropriate for phase-out.. My second concern regards the widespread practice of spreading uncomposted municipal sludge on agricultural fields as a "soil conditioner", which turns out to be contaminated with dioxins and furans.

2,4-D, according to *CEPA Priority Substances List, Assessment Report No.1*, contains dioxins not in the 2,3,7 and 8 positions, and so are considered to be relatively benign. I am aware of this and enclose a copy of the Agriculture Canada Memo which limits the total concentrations to 30 parts per billion. But since 2,4-D has been considered to be relatively safe, its use is widespread. Sales in tonnes in Canada, according to the CEPA Report, increased from 3800 to 4546 between 1980 and 1987. I have tried to obtain figures on current sales without success, but I suspect sales have continued to rise since 1987. 2,4-D is widely available for domestic use and as such is unregulable. It has been estimated that the average homeowner applies ten times the amounts of pesticides to his or her property than a farmer would apply to an equivalent area for agricultural purposes. Under the Pest Control Act, farmers and 'professional' lawn care workers are held accountable, but do-it-yourself gardeners cannot be supervised to the same degree. Given that the total *toxic equivalents* of the dioxins in the 2,4-D may be considerable when you factor in the widespread use, and that 2,4-D is exempt from regulation under CEPA because it is regulated under the Pest Control Act, it seems to me that the new CEPA should be expanded to include substances such as 2,4-D, in order to even begin to achieve the goal of reduction of dioxins at source. 2,4-D has enjoyed protection under the Pest Control Act for too long.

Municipal sludges (biosolids) across Canada may in fact be a much bigger source of unregulated dioxin and furan exposure. Recently in Ottawa-Carleton, as part of a public consultative process regarding disposal plans for biosolids onto local fields as "soil conditioner", pamphlets explained that "biosolids contain mostly organic matter and nutrients, metals and chemicals." I suspected that "chemicals" might include dioxins, so I requested a copy of the analysis and received *Organic and Metal Contaminants in Canadian Municipal Sludges* by M. Webber and J.A. Nicols, Feb. 1995. It may also have

helped that I am a member of the City of Gloucester Environmental Advisory Committee, i.e. to receive a copy. The general public, however, was not told the whole story. When our committee attended a workshop on biosolids management and asked why the dioxin and furan contaminants in municipal sludges throughout Canada seemed to be of so little concern, we were told that the amounts were acceptable because there are no CEPA guidelines for dioxins in soils and because locally they were within the clean-up criteria anyway. Mr. Webber stated much the same thing in the Executive Summary of his report, plus the acknowledgment that "Calculations based on proposed guidelines for the clean-up of contaminated sites in Ontario indicate that observed TEQ concentrations in some Canadian municipal sludges approximate maximum permissible levels for land application." Our concerns had no apparent effect on the decision to recommend expanded application onto local agricultural lands. Fortunately, I then came across the proposed guidelines for toxic substances under a new CEPA, outlining that substances such as sludge could also be designated as Track 1 because of the dioxin and furan content. Then Regional Council members sat up and took notice. Their final decision has yet to be made.

It is my understanding the Federal-Provincial Task Force which drafted the new toxic substances management policy was not aware of the contamination of municipal sludge, or the extent of its application. Canada spreads one hundred and twenty thousand tonnes of (dioxin-contaminated) biosolids onto agricultural fields currently, one third of the total production. This could well make sludge or biosolids the biggest source of dioxins. Ontario spreads sixty thousand tonnes of this total, representing only one fifth of the provincial total. The rest goes to landfill sites, and if Premier Harris has his way, these will soon be *unregulated* landfill sites. And that is why we need to have the new CEPA with the Toxic Substances Management Plan legislated and enforced as soon as possible.

2,4-D and municipal sludges should be recognized as toxic Track 1 substances and eliminated. Of course, if 2,4-D could be manufactured without the production of dioxins, that would be an improvement, and if chlorine was not used in the drinking water or in sewage treatment, then dioxin and furan combinations would be less likely to happen. This level of elimination makes more sense than expensive technologies like pyrolysis or environmental clean-up after the fact, assuming of course that treatment much less toxic than chlorine could be substituted.

I wish you success with this task and remember: 70% of the local population listed environmental concerns as number one when surveyed about biosolids. And that was before the extent of the contamination was known. We are not so naive as we used to be- please push for the legislation we all need. Thank you for the opportunity to make this presentation. I have made the following enclosures:

1. Department of Agriculture Memo to Registrants- Table II. April 15, 1983, R-1-216
2. *Organic and Metal Contaminants in Canadian Municipal Sludges*, M. Webber, J.A.Nichols, Wastewater Technology Center, Feb.1995 - Executive Summary and Table 13
3. *What are Biosolids?* pamphlet from The Water Environment Protection Division, 800 Green Creek Drive, Gloucester, Ont.

signed,

Peggy Land

Peggy Land
640 Laverendrye Drive
Gloucester Ont.
K1J 7C4

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd-DCU-DOE

MAR 22 1996

Rec'd-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: KARINE LE DU

Address: 13101 92 AVE

SURREY, BC

V3V 1H5

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd-DCU-DOE

MAY

Recu-UCM-MDE

138565

0-1025-1

0-1165-36/5157



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Cordyn Leconte

Address:

Box 491

Marwood NS

BOPIND

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd-000-000-000
MAR 25 1996
Regu-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Lise Levac

Address: 8 Bonanza

Pointe au chêne, Qué

JOU ITO

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

MAR 25 1996

Regu-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: JAKE LOCKHART

Address: 19 DENNISON AVE.

Trentville N.S. B4N-2P8

THE LUNG ASSOCIATION L'ASSOCIATION PULMONAIRE

PATRON
His Excellency the Right Honourable Roméo LeBlanc
P.C., C.C., C.M.M., C.D.
Governor General of Canada

PRÉSIDENT D'HONNEUR
Son Excellence le très honorable Roméo LeBlanc
P.C., C.C., C.M.M., C.D.
Gouverneur général du Canada

NATIONAL OFFICE

1900 City Park Drive, Suite 50

Gloucester, Ontario K1J 1A2

Tel (613) 747-6776

Fax (613) 747-7430

March 22, 1996

The Honourable Sergio Marchi, P.C., M.P.
Minister of the Environment
Terrasses de la Chaudière
10 Wellington Street
Hull QC K1A 0H3

0-1025-31

Honourable Sergio Marchi:

On behalf of the Canadian Lung Association, I am writing to express our strong support for the Parliamentary Standing Committee on Environment and Sustainable Development's 1995 Report and their 141 recommendations made on how to reform and improve the Canadian Environmental Protection Act.

There is an urgent need for the Federal government to take a strong leadership role in environmental protection by setting high environmental legislative standards. The Canadian Environmental Protection Act is Canada's primary environmental health protection law, affecting international air pollution, biotechnology, pollution prevention, regulation of toxic chemicals, access to information and environmental rights. The Canadian public needs an environmental Bill of Rights, which includes the right to intervene when the environment is being harmed and the right to sue polluters that break the law. As well, new provisions must be enacted to require all sectors of society to prevent the use and generation of pollutants rather than just control them.

Increasingly, those of us in the health field understand the clear links between human health and the environment. At the Lung Association, we know, for example, that air pollution and smog contribute to respiratory illness. It is important that the Canadian public have the right to know who is releasing which pollutants into the environment through comprehensive public access to information. Strong measures are needed to enforce strict environmental guidelines.

.../2

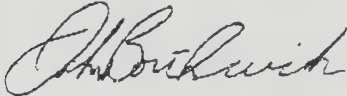
Since 1900

Charitable Registration No.
0036350-11-10

The bottom line is, when it comes to environmental legislation - human health should be the number one priority. This was also the conclusion of a presentation made on behalf of the Canadian Lung Association to the International Joint Commission on the Canada - United States Air Quality Agreement (document attached).

On behalf of the Canadian Lung Association, I strongly urge you to entrench the recommendations made by the Standing Committee on Environment and Sustainable Development. Canada needs a tough environmental protection act. Should you require additional information, please contact Kenneth Maybee, Executive Director of the New Brunswick Lung Association at (506) 455-8961. Remember, *"If You Can't Breathe, nothing Else Matters."*

Sincerely,

A handwritten signature in dark ink, appearing to read "John Borthwick". The signature is fluid and cursive, with the first name "John" being more prominent than the last name "Borthwick".

John Borthwick
President

Enclosure

- c.c. The Right Honourable Jean Chrétien, Prime Minister of Canada
- c.c. The Honourable Vaughn Blaney, Minister of the Environment
Government of New Brunswick

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd - DCLJ - DQF

MAR 25 1996

Recu - UCM - MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Jane M. M. M. M.

Address: Box 40

Quebec

BOP 190

138742

March 6 / 96

0-1025-

0 1165-36/5157

Dear Honorable Sergio Marchi,

I am a taxpayer concerned about my environment and the environment of my husband and three children.

In your "red book" it was stated that you were going to make pollution prevention a national goal. If this is your party's goal why are you letting the Standing Committee's report on CEPA Revisited, go by the wayside?

Government spends a lot of money on Standing Committee and then to turn around and ignore their recommendations is to me a waste of time, energy and money.

We are polluting our world at an increasing rate and I would like to see the government do something positive about it.

Yours truly
Nancy MacDonald, Pictou Island, N.S.

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd - DCU - DOE

Rec'd - UCM - MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

S. J. MacIntyre - Togo - 2nd Floor

Address:

37 0th Ave

Chatham, Ont

N 10 2nd

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

RICHARD MACKAY

Address:

RR# 1 NEW GERMANY

LUN. Co. N.S. B0R1E0

Richard W. Mackay

Garfield Mahood
196 MacPherson Avenue
Toronto, Ontario
M5R 1W8

39270

March 22, 1996

The Honourable Sergio Marchi
Minister of the Environment
Terrasses de la Chaudiere
10 Wellington Street
Hull, Quebec
K1A 0H3

Rec'd-DCU-DOE
APR 2 1996
Regu-UCM-MDE

0-1075-31

Dear Minister:

Re: Reform of the Canadian Environmental Protection Act

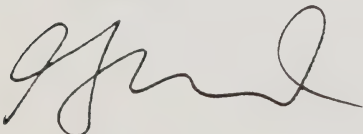
I have a longstanding interest in environmental law. I have read with interest the comments of the Toxics Caucus of the Canadian Environmental Network related to the above noted reform. I wish to endorse the call for greater federal commitment to environmental quality and, in particular, I wish to endorse the submission *It's still about our Health*.

Of course, given my other responsibilities, I cannot read and absorb all of the material available on this issue. I must, as a necessity, rely on my trust in the quality of the work of the environmental advocates who specialize in this area. I urge you to support their recommendations.

My commitment is not superficial. I am willing to pay more taxes, to even make sacrifices in necessary areas in order to obtain action to finally address the issues raised. Ultimately, our standard of living will improve as serious environmental reforms take effect.

Your government has made commitments to reduce the deficit ostensibly to give future generations a chance. While I have some concerns about the actions which have been taken on the great altar of deficit-reduction, I hope that the concern for the future of our children will also create the needed impetus to implement the reforms called for in *It's still about our Health*.

Yours sincerely,





LPA' d<>h'

Makivik
CorporationSociété
Makivik

Inukjuak, March 29 1996

by Fax: (819) 997-0449

Honourable Sergio Marchi
Minister of the Environment
House of Commons
Ottawa, Ontario

Re: comments:CEPA Review

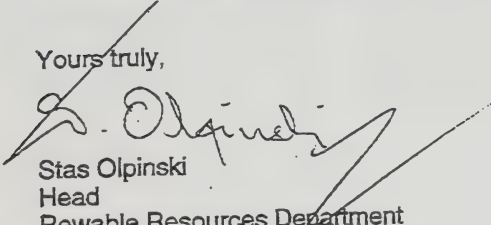
Dear Minister Marchi

Regarding the Federal government's response to the recommendations of the Standing Committee on Environment and Sustainable development outlined in its report entitled "It's about Health! Towards Pollution and Prevention" we would like to submit the following comments.

Our main concern is with the definition of "Aboriginal Lands". The second paragraph of the definition given on pages 79-80 states that "land subject to a comprehensive or specific claim agreement signed between the government of Canada and Aboriginal peoples, where title or ownership of the land remains with the federal government". The Inuit of Nunavik, as well as many other native groups, have recognized claims to land where no agreements have yet been signed. In order to provide aboriginal peoples with, as mentioned in the report, basic levels of environmental protection that other Canadian enjoy and take for granted (page 79), the definition should include areas of land that are subject to aboriginal rights, titles and claims. Therefore this second paragraph of the definition should read in the following way: land subject to a comprehensive claim or specific claim agreement.

On the issue of the creation of a CEPA National Advisory Committee with aboriginal representatives, we think that ITC should represent the Inuit. However, we would like to insure that we are advised of all development related to this issue and that we receive all correspondence. Furthermore, in order that the Inuit are meaningfully represented, sufficient funding must be provided.

Yours truly,

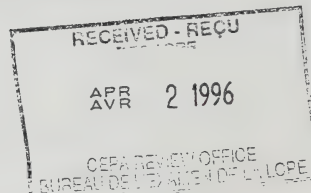


Stas Olpinski
Head
Renewable Resources Department

cc: Rosemarie Kuptana, President ITC

1996 03 26

8.1.3



Ms. Ruth Wherry
Director, CEPA Office
Environmental Protection Services
Environment Canada
Ottawa ON K1A 0H3

**GOVERNMENT'S RESPONSE TO THE STANDING COMMITTEE
RECOMMENDATIONS ON THE CANADIAN ENVIRONMENTAL PROTECTION ACT**

The direction outlined in The Government's Response provides the basis for an environmental protection regime which is vigorous and efficient. Manitoba Hydro supports the federal government's commitments to cooperation with other governments, industry and the public and its commitment to firm and consistent enforcement of environmental standards. The Corporation is pleased to offer the following comments on the government's plan for renewing the Canadian Environmental Protection Act (CEPA).

Bilateral administrative and equivalency agreements enable governments to share resources and focus efforts. Such agreements may be an effective response to governments' current fiscal challenges, and provide industry and the public with a more consistent and less cumbersome administrative structure for environmental matters.

However, Manitoba Hydro believes the Environmental Management Framework Agreement being coordinated by CCME provides a more comprehensive and effective approach to harmonization of government activities regarding environmental matters. We recommend that the Federal Government provide the leadership and resources necessary to expedite the harmonization process.

Within the Federal Government, opportunities for cooperation and harmonization may also be explored. The joint approach to the National Action Program on Climate Change by the Departments of Environment and Energy is one example where this has already occurred. On the other hand, the Federal Government regulates

classification, labelling and provision of technical information regarding toxic substances under a number of federal acts, including the Hazardous Products Act, the Transportation of Dangerous Goods Act and the Canadian Environmental Protection Act. Requirements are not consistent from one act to another. Current activities to update the Canadian Environmental harmonization of federal regulatory requirements regarding the classification and labelling of toxic substances.

Under CEPA, certain toxic substances will be virtually eliminated and others managed throughout their life cycle. These decisions require a solid scientific and economic basis, including assessments of the actual risks to human health and the environment and the financial implications to the economy. The definition of "virtual elimination" should reflect those criteria, as well as industry's ability to manage a particular substance. In the case of polychlorinated biphenyl, for example, the electricity industry has shown that it can safeguard the environment while moving toward the long-term elimination of that substance.

A number of other definitions will be important in the future implementation of the act. To cite one, care will be required in ensuring that "nutrients" is defined precisely; if not, many acceptable practices could be drawn into question.

The Government's response provides for a variety of mechanisms to achieve the nation's environmental objectives through industrial collaboration, including different fiscal, negotiated and voluntary programs. Voluntary agreements have proven to be an efficient and effective tool for both government and industry. Programs such as Accelerated Reduction or Elimination of Toxics (ARET) Program and the Voluntary Challenge and Registry Program under the National Action Program on Climate Change enable industry to find the most effective means to achieving the government's objectives.

In seeking expanded working relationships with industry, the Government also proposed more powers by which it could require information from industry. There should be a careful review to determine where these powers are justified and to ensure that they do not lead to excessive and unnecessary regulation or unwarranted demands on industry.

Ms. Ruth Wherry
1996 03 26
Page 3

Thank you for the opportunity to share our perspective on this important matter, and I look forward to receiving new information related to CEPA as it becomes available.

Yours very truly,

A handwritten signature in dark ink, appearing to read "K.R.F. Adams", followed by a long horizontal flourish line.

K.R.F. Adams, P. Eng.
Division Manager
System Planning & Environment

KRFA/bk/960326.cep

Neal Livingston
Margaree Environmental Association
c/o Box 55, Mabou, N.S. BOE IXO
902-258-3354, fax-258-3244

138165

February 11, 1996

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FEB 20 1996

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0-1025-/
2-4245-22/2

Sergio Marchi
Minister of Environment
House of Commons
Ottawa, Ont.

Dear Mr. Marchi:

1) Our group was extremely concerned about what is going on in regards to CEPA, after we looked at the comments of the Canadian Institute for Environmental Law and Policy, whose comments and paper on CEPA we support and agree with.

I had previously expressed concerns regarding other CEPA aspects to the former Minister, and we encourage you to make significant changes like the above institute recommends.

2) In the spring of last year we did considerable work to point out to the Hon. Ms. Copps, and Natural Resources that the system of self-assessment for departments on environmental assessment had completely failed at Forestry Canada in regards to the Federal/Nova Scotia Forestry Agreement. The response of Minister Copps in this matter and Minister MacLellan was very inadequate in respect to the material we presented on this matter. The only government body which gave our work in this matter proper attention was the Auditor Generals department.

I would encourage you to look at these files from last spring.

I look forward to hearing from you on matters related to CEPA, and our work done last year on departmental self-assessment.

Good luck with your new position.

Sincerely

Neal Livingston



Honourable Sir ...

139256

1. 0-1025-

Under normal circumstances, I would send this letter on some type of organizational letterhead, from one of the groups with which I am affiliated. But, under these circumstances, I have decided not to. As a man of conviction (or at least a man who tries to be), I am involved, in some capacity, with numerous committees dedicated to a host of tasks. It is the responsibility of all citizens to ensure that polluting industries and the federal government do not wantonly exploit and deliberately misuse the land and the vital resources therein. In light of that, I did not want to limit the scope of this plea by including only one, two, or three organizations with whom I am affiliated. This issue involves all of us and this plea involves the entire population. God gave man dominion over this earth and all that this entails. To that I add that to whom much is given, much is required. Through the utilization of our vast resources, we as a species, have acquired a considerable amount of power and with great power --- there must also come great responsibility. GOD WILL ONE DAY HOLD EVERYONE ACCOUNTABLE FOR THEIR ACTIONS AND THAT INCLUDES NATIONS AS WELL AS INDIVIDUALS.

From here, I would like to include a quote which can be found in the international bestseller, Blood and Belonging, written by Mr. Michael Ignatieff. It is written as follows:

...but in the Western tradition, patriotism is related to property and implies unlimited dominion over nature. To Crees, this is an alien and offensive concept. 'Billy' does not believe he owns the land; he believes he is part of it, one of the creatures who depend upon it, not only for his life, but for his vision of the world. Western nationalism, when seen beneath Billy's frozen blue sky, sixteen hundred kilometers north of Montreal, is not a rhapsody to the land, but a song of domination and capture. (Ignatieff, 1993, p. 164)

It is absolutely appalling that we have become so callous ... so hard-

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hearted and blind to the dangers involved with excess pollution. Incidences of breast cancer in women, testicular and prostrate cancers in men and learning disabilities in children are all on the rise. These occurrences cannot simply be overlooked. Likewise, to quote information provided by the Canadian Environmental Network (CEN) Toxics Caucus:

Federal proposals to reform the Canadian Environmental Protection Act (CEPA), Canada's primary environmental health protection law, fail to adequately strengthen the Act in the areas of pollution prevention, regulation of toxic substances, access to information and environmental rights. In the areas of biotechnology and international air pollution, the government's proposals actually threaten to weaken the very laws that the review process sets out to strengthen.

In light of that information, then, it is the belief of the CEN Toxics Caucus as well as myself and my "constituents" (I use this word to mean those who support my viewpoint moreso than individuals voting for me in any capacity) that the following initiatives be considered and, subsequently, implemented ...

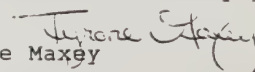
- 1) The federal government should set the tone, establish a valid and reliable measuring stick by which strong, environmental standards are enforced and maintained.
- 2) The utilization and release of substances that persevere in the terrain and atmosphere, which accumulate within the bodies of humans and wildlife should be eliminated, or at least kept under a tight reign. Humans, nor the Earth's ecosystem(s) can tolerate these chemicals.
- 3) The Canadian public requires an Environmental Bill of Rights, which would enable its members to intervene in instances where the integrity of the environment is being threatened and the right to pursue legal action against those who blatantly disregard the law.
- 4) Any legislative action should also provide the Canadian public with the "go ahead" concerning the acquisition of information. This informa-

tion would outline those who release destructive waste products into the environment. This would entail comprehensive, public access to that which includes all toxic releases to the environment, including substances sent off-site for recycling, or incineration;

5) The preservation of human health, security and the environment should be the paramount concern of government officials in the regulation of biotechnology. Further additions to the CEPA should be made, administered by Health Canada and Environment Canada, which would be applicable to any and all "biotechnological" products that would potentially enter the environment.

In conclusion, I want to clarify a few things ... for the record. I am not writing this based on an exaggerated, overdeveloped sense of self-importance. I am doing this because I see it as my duty, my responsibility. All too often, in today's society, people find it easy to turn their backs on the issues. So long as it does not directly involve them, so long as there are others "more suited" to the task of standing up for basic, universally fundamental principles, they see no need to take an active part, or role in the sequence of events. To me, this is a tragedy. To the leaders that I am addressing, know something first and foremost. This letter is not intended to reprimand, or lambaste you. In all fairness, I believe that it is my duty to pray for you. In the name of Jesus Christ, I pray that you be granted the necessary wisdom, the discernment, the profundity and the pansophism to make the appropriate and the most beneficial decision possible for all parties involved. In a situation like this one, we are all dependent upon one another and if solutions are to come about --- they must occur as a direct result of the collective effort of us all.

Let the Lord God lead you in your decisions and you will not deviate, or stray from the one, true and righteous path. In the interim, I remain sincerely yours


Tyrone Maxey

DEAR HONOURABLE SERGIO MARCHI

CEPA

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Neil Maxwell NEIL MAXWELL

Address:

P O BOX 1207
GREENWOOD NS
B0P 1 N0.

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

REC'D
MAR 25 1996
Regu-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

August Dany Michaud

Address:

311 Kitchener

Hawkesbury, ont K6A 2P1

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

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MAR 25 1996

Regu-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Louis Michaud

Address:

311 Kitchener
Hawkesbury ON
K6A 2P1

FAX

MINISTER OF THE ENVIRONMENT

RAM. F MILLER

(416) 537-4991

3 PAGES

The Feminist Alliance

on New Reproductive and Genetic Technologies

March 21, 1996

The Honourable Sergio Marchi
Minister of the Environment
Fax # (819) 953-3457

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MAR 25 1996

Mr Marchi

Regu-UCM-MDE

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Enclosed please find the document submitted by the FANRG/T concerning the government's response to the Standing Committee on Environment and Sustainable Development in its Fifth Report, It's About Our Health. The Standing Committee recommended that the provisions of the Canadian Environmental Protection Act be strengthened. The government's response however, envisions a significant weakening of environmental regulation in Canada.

We are deeply concerned that the government's response contemplates not only deregulation, it also facilitates increased conflict of interest. Canadians want improved protection for environmental and human health, not lowered standards. We believe that the prime obligation of government is to protect the public interest in this regard. Promotion of industry is a far lesser obligation. Furthermore, Canadians believe that the functions of promotion and regulation should be institutionally separated.

As has become graphically apparent in Britain with the recent deaths that have been linked to diseased beef, the public interest and the public health are not served by the assumption of both regulatory and promotional functions by one government ministry. In Canada, the Department of Agriculture and Agri-Food has positioned itself as a determined promoter of biotechnology. It cannot simultaneously serve as the regulator of this industry, as the government's response contemplates.

We look forward to hearing your comments concerning this crucial issue. We certainly anticipate that you will work to insure the improvement of environmental and human health protection through an infrastructure not compromised by conflicts of interest.

Sincerely



Fiona Miller for FANRG/T

c.c. The Right Honourable Mr. Jean Chrétien, Prime Minister of Canada
c.c. The Honourable Mr. David Dingwall, Minister of Health

150 Montgomery Avenue, Toronto, Ontario M4R 1E2
Phone/Fax: (416) 537-4991

RECEIVED
MINISTER OF
THE ENVIRONMENT
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MAC

**The Mining Association of Canada
L'Association minière du Canada**

March 25, 1996

Honourable Sergio Marchi
Minister of the Environment
Environnement Canada
Terrasses de la Chaudière
10 Wellington Street
Hull, QC K1A 0H3

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MAR 29 1996

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0-1035-31

Dear Minister:

Towards an Effective Canadian Environmental Protection Act

Attached please find a submission "Towards an Effective Canadian Environmental Protection Act". This document was prepared by The Mining Association of Canada in response to the Government Response "Environmental Protection Legislation Designed for the Future -- A Renewed CEPA".

In working towards a framework for a renewed CEPA, the government has effectively built upon the foundation of issues and recommendations identified by the House of Commons Standing Committee on Environment and Sustainable Development. However, we have identified recommendations in the Government response which could be clarified or improved or which, in our view, are not necessary or desirable for a renewed CEPA.

I trust that you find the comments of interest and a valuable input into continued constructive discussion of the future of environmental management in Canada.

Yours sincerely,

C. George Miller
President

Enclosure

cc: Ron Sully, Natural Resources Canada
Tony Clarke, Environment Canada
Roy Hickman, Health Canada



MAC

The Mining Association of Canada
L'Association minière du Canada

Towards an Effective Canadian Environmental Protection Act

prepared by

The Mining Association of Canada

in response to

**Environmental Protection Legislation
Designed for the Future - A Renewed CEPA**

March 22, 1996

Part 1: Introduction and Overview

The Mining Association of Canada

The Mining Association of Canada (MAC) is the national organization of the Canadian mining industry. MAC comprises companies engaged in mineral exploration, mining, smelting, refining and semifabrication. Member companies account for the majority of Canada's output of metals and major industrial materials.

MAC's mission is to promote, through the collective action of members, the growth and development of Canada's mining and mineral-processing industry for the benefit of all Canadians. The Association's broad functions are to promote the interests of the industry nationally and internationally, to work with governments on policies affecting minerals, to inform the public and to promote cooperation between member firms to solve common problems. MAC works closely with provincial mining associations and other industry groups across Canada and in other countries.

MAC's Submission to the CEPA Review

MAC's submission regarding the federal government's proposal for revising the *Canadian Environmental Protection Act* (CEPA) has been prepared by our Metals Working Group (MWG). As an indication of the high priority placed by MAC on our participation in the CEPA review process, the MWG met on three occasions to develop and refine our submission.

The philosophical basis for our submission is provided by MAC's *Environmental Policy*. The preamble to our *Policy* states that:

Member companies of The Mining Association of Canada are committed to sustainable development which embodies protection of human health, the natural environment and a prosperous economy. In all jurisdictions, in addition to complying with legislative requirements, member companies will diligently apply technically proven and economically feasible measures to advance protection of the environment through exploration, mining, processing, manufacturing and closure.

The full text of our *Environmental Policy* is included in Appendix A.

Our submission is presented in two parts. Part 1 provides our overall impressions of *The Government Response* as well as a summary table outlining our perspectives and recommendations pertaining to specific sections of the government's proposal. Part 2 of our submission contains more detailed comments on the recommendations in *The Government Response*.

Our submission focuses on sections of *The Government Response* which are of particular interest or relevance to member companies of MAC. As such, we have provided comments on specific recommendations in Chapters 1, 4, 6, 8, 9 and 10 of the government's proposal.

Overall Impressions of *The Government Response*

Overall, we are encouraged by the direction taken by the government in response to the Standing Committee's original report. In our view, the government has effectively built upon the foundation of issues and recommendations identified by the Standing Committee to further the process of developing a workable and realistic framework for a renewed CEPA. In particular, MAC is encouraged by the following aspects of *The Government Response*:

- explicit recognition of sustainable development, both as a guiding principle and throughout many of the proposed provisions for amending CEPA;
- explicit recognition of economic considerations – as an integral component of sustainable development, as a guiding principle, as an aspect of applying the precautionary principle, and in some of the proposals for amending CEPA;
- confirmation of the role of science in environmental protection and the risk-based approach to decision-making; and
- reaffirmation of the conditions in Section 11 of the current CEPA as the basis for deciding which substances are toxic under CEPA.

While we see the above as positive developments, we have identified recommendations in *The Government Response* which could be clarified or improved or which, in our view, are not necessary or desirable for a renewed CEPA. In particular, our concerns are centred on the recommendations which:

- exclude off-site recycling and reuse from the definition of pollution prevention (1.2 and Chapter 6);
- provide for new federal authority in existing areas of provincial or territorial jurisdiction, and introduce duplication of current provincial or territorial authority (6.1 - 6.3, 6.7, 6.12 - 6.17, 8.1, 8.9, 9.14 and 9.18);
- propose cooperative approaches involving the federal and provincial or territorial governments, but without details on how this cooperation will occur (8.1);
- introduce unnecessary federal authority for hazardous wastes (8.15, 8.20 and 8.21) and non-hazardous solid wastes (8.18, 8.19 and 8.22); and
- lack safeguards for justification, reasonableness and cost (4.2, 6.4 - 6.6, 9.9 and 9.17).

Summary of MAC Perspectives and Recommendations

The following table provides a summary of our perspectives and recommendations concerning specific sections of *The Government Response*. Details on the rationale underlying our perspectives and recommendations can be found in Part 2 of our submission.

Summary of MAC Perspectives and Recommendations Regarding *The Government Response*

<i>Response Section(s)</i>	<i>MAC Perspective</i>	<i>MAC Recommendation(s)</i>
1.1, 1.3, 1.6, 1.7 and 1.8	Support fully.	
1.2 and Chapter 6 preamble	Support in principle; clarification needed.	Expand interpretation of pollution prevention to include off-site recycling and reuse.
1.4	Clarification needed.	Defer inclusion of definition for biological diversity in the <i>Act</i> until next CEPA review.
1.5	Support in principle.	Need further details throughout <i>The Government Response</i> on processes to be followed to ensure intergovernmental cooperation.
1.9	Support fully.	
4.2	Improvements needed.	Information requests should be made in consultation with other federal departments. Provinces and territories should also be consulted where information gathering may involve a provincially/territorially regulated facility. The <i>Act</i> should clearly specify what information can be requested. Safeguards are needed for justification, reasonableness and cost.
6.1 - 6.3	Provisions not needed.	Recommendations 6.1 - 6.3 should not be incorporated in the <i>Act</i> . Existing provincial/territorial requirements to consider pollution prevention in environmental assessment and in the granting and renewal of operating permits are sufficient.
6.4 - 6.6	Improvements needed.	Consider model plan as guidance for industry, not as absolute requirements. Failure to prepare plan using guideline should not be an offence under CEPA. Safeguards are needed for justification, reasonableness and cost.
6.7	Clarification needed.	Before any provisions are incorporated in CEPA concerning use of the NPRI to enable industry to report on pollution prevention activities, the government should seek multi-stakeholder input on any changes to the NPRI (as per Recommendation 4.3).
6.12 - 6.17	Improvements needed.	Existing federal, provincial/territorial and municipal authority concerning the environmental aspects of emergencies should be carefully reviewed to determine whether additional federal authority is needed.
8.1	Improvements needed.	Framework and timelines should be developed cooperatively, not unilaterally by the federal government. Criteria are needed to define significant contributors and emergency situations.

Response Section(s)	MAC Perspective	MAC Recommendation(s)
8.35 and 8.37	Support fully.	
8.36	Clarification needed.	The Minister should continue to exercise discretion in considering requests and should refuse to convene a Board of Review if the reasons for the request do not provide a reasonable basis to conclude that the decision may be inappropriate and should therefore be reconsidered.
9.1 and 9.6	Improvements needed.	Re. 9(i) and 9.6 - Canada should continue to participate and take a lead role in developing an alternative framework for inorganic compounds and sparingly soluble compounds. Re. 9(iii) - A substance should not be declared "CEPA-toxic" unless it meets current Section 11 conditions.
9.2 and 9.8	Improvements needed.	Restrictions or bans by other countries should be viewed as an alert and a source of information, which must then be reviewed against Canadian exposure, criteria and conditions.
9.5	Support fully.	We support the clear direction in Recommendation 9.5 that Section 11 conditions, including risk-based decision-making, be maintained in a renewed CEPA.
9.9	Improvements needed.	Safeguards are needed for justification, reasonableness and cost.
9.10	Improvements needed.	Appeal mechanisms should be instituted at the following points: 1) once the assessment has been completed; and 2) once a substance has been added to the Toxic Substances List (Schedule 1). It would also be appropriate to establish a regular review process for Schedule 1 substances.
9.11	Clarification needed.	Inclusion of the provision described in Recommendation 9.11 should be deferred until completion of the 1997 review process concerning the New Substance Notification Regulations.
9.14 and 9.18	Clarification needed.	These provisions should be clarified to reflect the role that other jurisdictions and bodies would play in prevention and control.
9.17	Improvements needed.	This provision is reasonable, provided that the data collection authority is clearly tied to reassessment of a substance's Schedule 1 status (see our recommendation concerning 9.10); and that safeguards are included for justification, reasonableness and cost.
Chapter 10 ("federal works")	Clarification needed.	In the case of mining operations, provincial and territorial authorities should continue to retain primary responsibility for regulation and control.

<i>Response Section(s)</i>	<i>MAC Perspective</i>	<i>MAC Recommendation(s)</i>
8.9	Support in principle; clarification needed.	Recognize explicitly that any direct action taken by the federal government in the area of transboundary water pollution should be done jointly with the province in question.
8.12	Support fully.	<i>Suggested definition: Wastes: transportable substances, mixtures of substances, or objects which cannot feasibly be a part of the commercial cycle or chain of utility. The commercial cycle includes manufacturing, use, recycling, recovery, reclamation, and raw material extraction and processing.</i>
8.13	Clarification needed.	Defer consideration of including principle of shared responsibility in Act until next CEPA review.
8.15	Provision not needed.	Recommendation 8.15 should not be incorporated in the revised Act.
8.18 and 8.19	Provisions not needed.	Recommendations 8.18 and 8.19 should not be incorporated in the revised Act.
8.20	Provision not needed.	Recommendation 8.20 should not be incorporated in the revised Act.
8.21 and 8.22	Provisions not needed.	Cost recovery provisions regarding non-hazardous wastes and the internal movement of hazardous and are not needed.
8.23	Improvements needed.	It is not necessary to amend CEPA to develop environmental objectives and codes of practice.
8.24	Support in principle; clarification needed.	Clarify that Part VI of CEPA is not intended to apply to marine outfalls.
8.25	Alternative needed.	Recommendation 8.25 should not be incorporated in the revised Act.
8.26 and 8.27	Support in principle; clarification needed.	Clarify that the level of assessment for alternative approaches must be commensurate with the quantity and character of the waste concerned.
8.28	Support fully.	
8.30	Support in principle; clarification needed.	Clarify that the effectiveness and efficiency of the ocean dumping program is subject to periodic review to ensure that fair value for money is provided to permit applicants and grantees, and that environmental taxes and charges are not applicable.
8.31	Support fully; clarification needed.	Notification through local newspapers should continue. Requirements to publish in the Canada Gazette, Part I, should be discontinued.
8.32 - 8.34	Support fully; clarification needed.	Clarify that the 10-day period should follow publication in the electronic registry rather than in the Canada Gazette, Part I.

Part 2: MAC Comments on Specific Recommendations in *The Government Response*

Chapter 1. Guiding Principles for an Effective CEPA

In general, MAC supports the recommendations for guiding principles for a renewed CEPA, as described in Chapter 1. In particular, we strongly support the inclusion of the following principles and related concepts in the revised *Act*:

- sustainable development (Recommendation 1.1);
- the ecosystem approach, especially reflecting the "interdependence of social, economic and environmental systems" (Recommendation 1.3);
- decision-making based on science and a risk-based approach (Recommendation 1.6);
- the precautionary principle, as defined at *UNCED* in 1992, and including recognition of the need for cost-effectiveness in its application (Recommendation 1.7);
- economic responsibility, and recognition of "the interrelationship of economic and environmental principles and...the role of such economic considerations as the benefit-cost approach and flexible economic decision-making" (Recommendation 1.8).

In principle, we also support including the concepts of pollution prevention, biological diversity and intergovernmental cooperation in a renewed CEPA, but have concerns about how these will be interpreted or operationalized in the revised *Act*.

Pollution Prevention

With regard to Recommendation 1.2, we accept the proposed definition for pollution prevention, but note that the interpretation of this definition in *The Government Response* appears to exclude off-site recycling and reuse. As can be seen from our comments on Chapter 6, we recommend that pollution prevention should encompass off-site recycling and reuse, and that this interpretation should be made explicit in CEPA.

Biological Diversity

Recommendation 1.4 proposes to incorporate a definition for biological diversity drawn from the Convention on Biological Diversity. While we are supportive of the need to protect biodiversity, we are unclear as to how this principle will be operationalized in CEPA, and note that there is little mention of biological diversity in the remainder of *The Government Response*. In this light, it may be premature to include a definition of biological diversity in CEPA. We recommend that the inclusion of a definition in the *Act* should be deferred until the next CEPA review. At the time of the next review (seven years from now), much more will be known about how to plan for

and implement biodiversity – a topic which is currently the focus of much national and international discussion.

Intergovernmental Cooperation

Similarly, Recommendation 1.5 promotes the principle of intergovernmental cooperation, but we find that there are few details or explicit processes provided in *The Government Response* concerning how this cooperation will happen. In our comments on Chapters 6, 8 and 9 in particular, we have identified recommendations in the *Response* which could be strengthened by the inclusion of more details about how intergovernmental cooperation will occur.

User/Producer Responsibility

With regard to the principle of user/producer responsibility in Recommendation 1.9, we strongly support the proposal to clarify to whom and how the concept would apply before incorporating it in a renewed CEPA.

Chapter 4. Ecosystem Science and National Norms

Submission of Information for Research and Publication

MAC is generally supportive of the intent behind the information gathering powers proposed in Recommendation 4.2. We believe that a carefully scoped and defined information gathering provision in a renewed CEPA can further the progress of environmental science, contribute to national state of the environment reporting, and provide the basis for formulation of ecosystem objectives, guidelines, inventories or codes of practice under CEPA. However, we are concerned that Recommendation 4.2, as currently written, is too open-ended and lacks necessary safeguards in view of "the burden that may be placed on industry."

As such, MAC recommends improvements and further definition of Recommendation 4.2 in the following areas:

Ministerial Authority: The information gathering powers should not rest solely with the Minister of Environment. We recommend that information requests should be made in consultation with the Governor in Council or the Minister responsible for Statistics Canada. In addition, provinces and territories should also be consulted where information gathering may involve a provincially/territorially regulated facility.

Type and Relevance of Information to be Collected: Recommendation 4.2 would provide the Minister of Environment with power to request virtually any type of information. We recommend that the revised *Act* clearly specify what information can be requested. This can be accomplished in part by changing the wording in the Recommendation from "whatever data is in one's possession or control such as" to "relevant data in one's possession and control." Removal of the words "such as" is essential to define what information may be sought. We also recommend that the list of information types to be collected (items a-j) be carefully examined to ensure that each item is directly relevant to the requirements of CEPA.

Safeguards: We support the safeguards that are currently included in Recommendation 4.2. We recommend that additional safeguards are needed for justification, reasonableness and cost. In this regard, criteria are needed to define the use of information gathering powers "only when necessary" and "in a cost-effective manner."

Chapter 6. Pollution Prevention

As can be seen from MAC's *Environmental Policy* (Appendix A), we are committed to environmental excellence through integrated environmental management, continual improvement and other practices. Pollution prevention is an important component in this quest for excellence.

While we recognize the importance of pollution prevention in effective environmental management and protection, we have four main concerns with respect to the Government's proposals for incorporating pollution prevention in the revised *Act*, as described in Chapter 6:

- interpretation of the definition of pollution prevention to exclude off-site recycling and reuse;
- existing provincial/territorial requirements to consider pollution prevention in environmental assessment and in the granting and renewal of operating permits are sufficient;
- absence of safeguards – particularly for justification, reasonableness and cost – for operations which would be affected by the proposed recommendations; and
- lack of defined process for ensuring cooperative approaches between federal and provincial or territorial government in the area of pollution prevention.

Our comments on specific sections of Chapter 6 are provided below.

Interpretation of Pollution Prevention Definition

MAC supports the definition of pollution prevention that is provided in Recommendation 1.2 of the Government Response and drawn from *Pollution Prevention - A Federal Strategy for Action*. However, we are very concerned that the interpretation of this definition is that pollution prevention does not include off-site recycling and reuse. We believe that recycling and reuse are essential ingredients in shifting the emphasis from "managing pollution after it has been created to preventing pollution in the first place." In mining and other industries, residues from operations often become inputs for other operations which are off-site. These residues are being recycled or reused rather than becoming part of the waste stream or sent to treatment facilities, and in our view, this is in keeping with the philosophy and intent of pollution prevention. In addition, the concept of "cradle to cradle" material cycles – including reuse and recycling of products after use – is well-established in the Canadian mining industry. In our view, metals may represent the ultimate in sustainable materials because they can be recycled indefinitely.

We note that in British Columbia, the definition used in the Memorandum of Understanding for BC's Pollution Prevention Demonstration Project includes reuse and recycling as part of the pollution prevention hierarchy. In the MOU:

...Pollution Prevention means to avoid, eliminate or reduce the release of polluting substances to our environment through a hierarchy of activities including the:

- avoidance, elimination or substitution of polluting products
- reduction in use of polluting products
- elimination, and reduction in, the generating of polluting by-products
- reuse and recycling of polluting by-products
- energy recovery from polluting by-products, and if necessary
- treatment or containment of residual polluting by-products
- remediation of residual polluting by-products

MAC recommends that the definition of pollution prevention be interpreted to include off-site recycling and reuse, and that this interpretation should be made explicit in CEPA.

Pollution Prevention Planning

Recommendations 6.1 - 6.3 would enable the federal Minister of Environment to require the preparation and implementation of pollution prevention plans:

- for toxic substances;
- where there is an infraction of a CEPA regulation; or

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- where there is a finding of liability under the administrative monetary penalty system, which is proposed to be included in the revised *Act*.

While MAC is supportive of pollution prevention planning, we believe that existing provincial/territorial requirements to consider pollution prevention in environmental assessment and in the granting and renewal of operating permits are sufficient. Adding federal involvement in this area would create unnecessary duplication, administrative costs for government, and additional workload for industry.

We are also concerned that these requirements effectively separate pollution prevention planning from integrated environmental management systems. The trend in modern environmental management practice, as exemplified by the draft ISO 14000 standards, is to fully engage the commitment and initiative of all Canadian workers – from the shop floor to management – in the challenge of continuous improvement in environmental performance. Thoughtful people, from all perspectives on environmental management, have moved past clumsy, intrusive and expensive command and control as the way forward. In our view, the preferred approach is for government to set overall goals for pollution prevention, and then require the companies to find the most efficient ways to reach those goals.

In view of the above, MAC recommends that Recommendations 6.1 - 6.3 not be incorporated in the revised *Act*.

Pollution Prevention Plans - Guidelines and Submission Requirements

Recommendation 6.4 provides authority for the Minister to develop a guideline for preparing pollution prevention plans. We support the development of a guideline, provided that the guideline components listed in Recommendation 6.4 are viewed as guidance to industry rather than absolute requirements. In this light, we note that **Recommendation 6.5** would make it an offence under CEPA if a plan is not submitted "in accordance with the guideline." This would have the effect of making plan preparation (using the guideline) a regulated activity.

Specifically, we recommend that:

- the guideline components in Recommendation 6.4 be considered as guidance to industry rather than requirements;
- Recommendation 6.5 should indicate that while plans must be prepared, the guideline is only an adjunct and not a legal requirement, and that accordingly, it not be considered an offence under CEPA to fail to prepare a plan in "accordance with the guideline"; and
- safeguards are needed for justification, reasonableness and cost.

Tracking Progress on Pollution Prevention

We are unsure about the implications of Recommendation 6.7 as currently written. Before any provisions are incorporated in CEPA concerning use of the National Pollutant Release Inventory to enable industry to report on pollution prevention activities, we recommend that the government follow Recommendation 4.3 in *The Government Response* to seek multi-stakeholder input on any changes to the NPRI.

In particular, we are concerned about the administrative and enforcement implications of this provision for the federal government, as well as the regulatory implications for industry, particularly in view of existing provincial and territorial approval processes.

Environmental Aspects of Emergencies

Recommendations 6.12 - 6.17 call for an increased federal role in the environmental aspects of emergencies by amending CEPA to provide the Minister of Environment with authority to establish a new legislative framework, as well as standards, guidelines and codes of practice. In our view, the existing federal authority under the Constitution and other federal legislation may already be adequate to deal with environmental emergencies. We are concerned that introducing new regulatory and non-regulatory provisions at the federal level would lead to an unnecessary additional administrative and enforcement burden for the federal government, as well as an unnecessary burden for industry.

A related concern is that Recommendations 6.12 - 6.17 appear to demonstrate insufficient recognition of existing provincial and municipal authority and systems for addressing the environmental aspects of emergencies. In particular, Recommendations 6.16 and 6.17 do not reflect the municipal role in site identification and registration and reporting of spills, leaks and other incidents.

In view of the above, we recommend that before Recommendations 6.12 - 6.17 are included in CEPA, existing federal, provincial/territorial and municipal authority concerning the environmental aspects of emergencies should be carefully reviewed to determine whether additional federal authority is needed.

Chapter 8. Controlling Pollution and Wastes

International Air Pollution

Recommendation 8.1 proposes development of a framework and timelines for controlling domestic sources of international air pollution. We believe that this provision could be strengthened considerably by explicitly defining the process by which the framework and timelines will be developed, particularly:

- how consultation with provinces, territories and Aboriginal Peoples will occur;
- how a cooperative approach will be ensured in view of existing provincial and territorial jurisdiction; and
- how linkages will be made to international processes and agreements.

Building on the above, we recommend that the development of a framework and timelines should be a cooperative effort involving the federal and provincial governments, rather than a unilateral federal initiative in "consultation" with the provinces.

Recommendation 8.1 would also provide the Minister of Environment with authority to unilateral action where there is an emergency situation. If this provision is included in the revised *Act*, we recommend that criteria be developed to define "emergency situations". Similarly, criteria are needed to define "significant contributors" in the context of comprehensive management of combinations of air pollutants.

International Water Pollution

Recommendation 8.9 calls for a renewed CEPA to include provisions to prevent transboundary water pollution, mirroring the U.S. *Clean Water Act*. In principle, we believe that this is a reasonable provision to include in CEPA. However, we suggest that consideration needs to be given to the fact that, in Canada, most provinces have the primary regulatory authority over defined sources such as industries and municipalities. Under the *Clean Water Act*, the Environmental Protection Agency notifies the states but is responsible for direct action, such as calling for hearings. In the Canadian context, similar direct action by the Minister of Environment would constitute federal intervention in an area of provincial authority.

In view of the above, MAC recommends that if this provision is incorporated in the revised *Act*, there should be explicit recognition that any direct action taken by the federal government in the area of transboundary water pollution should be done jointly with the province in question.

Definition of Waste

MAC welcomes the effort to define "waste" as part of a renewed CEPA, as proposed in Recommendation 8.12. As our contribution to this effort, we recommend the following definition:

Wastes: transportable substances, mixtures of substances, or objects which cannot feasibly be a part of the commercial cycle or chain of utility. The commercial cycle includes manufacturing, use, recycling, recovery, reclamation, and raw material extraction and processing.

Responsibilities of Users and Producers

Recommendation 8.13 proposes to incorporate the principle of shared responsibility — among users and producers of products or toxic substances — in a renewed CEPA. We agree that users and producers should be responsible for their wastes. However, we are unclear as to the implications of Recommendation 8.13. For example, how would the principle of shared responsibility be applied in cases where there are multiple inputs to a product (such as a refrigerator), or for products which have multiple producers or users? While we support the concept of product stewardship, we believe that it is not appropriate to make it a legislated requirement under CEPA. In our view, such a provision would be very difficult to administer and enforce, and would constitute unnecessary government intervention in the marketplace.

We also note that the government has recognized the difficulties involved in implementing the concept of user/producer responsibility in a renewed CEPA in Recommendation 1.9 of its *Response*, which calls for "further work to clarify to whom and how the concept of user/producer responsibility would apply."

Given the above, we believe that it is premature to incorporate this principle into CEPA, and that further consideration of its inclusion in the Act be deferred until the next CEPA review.

Hazardous Wastes

Recommendation 8.15 would require exporters to have plans for reducing/phasing out hazardous waste which is being exported for disposal. As with Recommendations 6.1 - 6.3 for pollution prevention planning, Recommendation 8.15 effectively separates one aspect of environmental management — hazardous waste management — from integrated environmental management systems. In our view, this separation is not conducive with effective integrated management and continual improvement. In addition, Recommendation 8.15 seems to focus more on the issue of export than on environmental impact and protection. In effect, this provision appears to penalize

facilities that are not in close proximity to a domestic destruction facility. There is also a lack of recognition of multi-media considerations here. For instance, reductions in air emissions by capture of the substance of concern may result in a hazardous solid waste with lower overall environmental impact compared to continued air emissions.

As such, MAC recommends that this provision not be incorporated in the revised Act.

Non-Hazardous Solid Wastes

Recommendations 8.18 and 8.19 would add federal authority to control and ban the export from and import into Canada of non-hazardous waste for disposal. We believe that there is no environmental justification or demonstrated need for these provisions, and that their inclusion in CEPA would create an unnecessary administrative role for the federal government.

We recommend that these provisions not be included in CEPA. The authority proposed in Recommendations 8.18 and 8.19 is currently not required by any international agreement and Canada should not enter into any international agreement that would propose such unnecessary restrictions.

Interprovincial/Territorial Movements of Hazardous Wastes

Recommendation 8.20 would allow federal authority to control interprovincial/territorial movement of hazardous recyclables and waste. Our concerns about this proposed provision are twofold:

- *Unnecessary Additional Federal Authority:* Recommendation 8.20 appears to move towards federal involvement in regulating hazardous waste facilities, an area of provincial jurisdiction and authority. In our view, there is no demonstrated need for additional federal involvement in tracking interprovincial/territorial movement of hazardous wastes beyond the current provisions in the *Transportation of Dangerous Goods Act*.
- *Unnecessary Impediment to Movement of Materials for Processing:* In effect, Recommendation 8.20 treats provinces and territories like sovereign countries. We are concerned that this provision would impede interprovincial/territorial movement of materials for processing, as additional costs would be imposed on shipments moving beyond provincial or territorial borders. We also note that Recommendation 8.20 would contradict the recently negotiated agreement for removal of internal trade barriers.

We strongly oppose Recommendation 8.20 and recommend this provision not be included in CEPA.

Cost Recovery for Movements of Hazardous Wastes

Recommendations 8.21 and 8.22 would provide federal authority to institute cost recovery for movement of hazardous wastes and non-hazardous solid wastes. In principle, we do not object to cost recovery associated with import and export of hazardous wastes, provided appropriate safeguards are in place to ensure maximum efficiency. However, we are strongly opposed to the proposed regulation of internal movement of hazardous and non-hazardous wastes, and as such, we recommend that cost recovery provisions in this area are not required.

Environmental Responsibility for Oceans

As recognized, Part VI of the current CEPA is specific to oceans and deals only with ocean dumping. The *Fisheries Act* and the new *Canada Oceans Act* also address environmental protection of coastal zones and oceans. Recommendations 8.23 - 8.37 in *The Government Response* propose a series of provisions to amend CEPA to provide additional federal authority for protecting Canada's oceans.

MAC is concerned that the evolving legislative framework is unnecessarily complex. Diffusion of responsibility is inefficient and will act as an obstacle to integrated environmental management of Canada's oceans and coastal zones.

In this light, we offer the following recommendations regarding the roles and responsibilities of the federal government and key agencies for environmental protection of coastal zones and oceans:

- i) The federal government should continue to participate in international negotiations to develop a global approach to coastal zone management and lead the development of a national Coastal Zone Management Strategy in cooperation with provinces and territories.
- ii) The Department of Fisheries and Oceans (DFO) should concentrate on management of marine fisheries and habitat, while Environment Canada or the provinces should manage freshwater fisheries and habitat. DFO would therefore be responsible for navigation and for the conservation and protection of fisheries within the coastal zone, while control of land-based contaminant sources should continue to be primarily the responsibility of the provinces.
- iii) The national Coastal Zone Management Strategy should be implemented through Regional Coastal Zone Management Plans. The development and implementation of regional plans should respect the competence of DFO, Environment Canada, Natural Resources Canada and other jurisdictions:

-
- DFO should identify marine resources to be protected and provide scientific advice to assist in selecting appropriate environmental quality objectives and understanding the transport, behaviour and fate of contaminants in the marine environment.
 - **Environment Canada** should inventory natural and anthropogenic sources of contaminants and release rates with scientific advice from **Natural Resources Canada**. **Environment Canada** should also take the lead in establishing environmental quality objectives, in cooperation with the provinces and other stakeholders. Regional priorities and actions should be determined in a cooperative manner, with **Environment Canada** ensuring accountability through agreements with provinces or territories and stakeholder groups concerning specific commitments, roles, responsibilities and actions required to ensure that regional coastal zone management activities are fully integrated, effective and efficient. Where appropriate, codes of practice could also be prepared to guide management of coastal areas and land-based sources of marine pollution.

Environmental Objectives and Codes of Practice

Recommendation 8.23 proposes to amend CEPA to develop environmental objectives and codes of practice to preserve coastal areas and to guide reduction of contamination from land-based sources of pollution. MAC supports the appropriate use of environmental objectives and codes of practice as effective management tools, but we believe that it is not necessary to amend CEPA in order to formulate such measures for coastal areas or for the management of land-based sources. In addition, we suggest that national environmental objectives may not be appropriate, given the diverse nature of Canada's oceans and coastal areas. As recommended above, cooperative approaches should be used to establish appropriate regional and local objectives. Additionally, use of the verb "preserve" in Recommendation 8.23 suggests that no change from current conditions would be acceptable. Therefore, we suggest that it be replaced by "protect" to clarify the intent.

We recommend that it is not necessary to amend CEPA to develop environmental objectives and codes of practice, and that cooperative approaches – involving all levels of government and other stakeholders – be used to establish appropriate regional and local objectives.

Definition of Ocean Disposal

Recommendation 8.24 would amend the definition of ocean disposal to include disposal from wharves and in intertidal areas. In our view, a clearer distinction between "dumping" and other forms of disposal would be helpful in clarifying the application of Part VI of CEPA and the *Fisheries Act*. Section 66 defines "dumping" but not "disposal", which is used repeatedly in the definition of "dumping". "Dumping" is also defined to include on-ice disposal and incineration

at sea. In general, however, the activity of "dumping" appears to involve three elements: loading of a waste on a vessel, aircraft or anthropogenic structure, transportation to the selected disposal site at sea, and dumping from a vessel, aircraft or anthropogenic structure. These activities are necessarily sequential and may be carried out once or periodically. Whether or not the activities are recurring, they are episodic in nature. A permit system involving an application, waste characterization and appropriate environmental assessment, public notification and input and a specific authorization to dump a specified quantity and quality of waste at a particular location over a particular period of time is appropriate for such an activity but would be inappropriate for dealing with continuous discharges at a fixed location.

MAC is not aware of any particular problems related to "dumping" from wharves or in intertidal zones. Paragraph 66(1)(c) could exclude such activities from the application of Part VI of CEPA and from the *Ocean Dumping Regulations*, but such activities would in any case be contrary to either subsection 35(1) or 36(3) of the *Fisheries Act* or both. It is therefore unclear what purpose would be served by the proposed amendment, although MAC would have no fundamental opposition to such an amendment.

We also urge the government to clarify that Part VI of CEPA is not intended to apply to marine outfalls, which should continue to be the subject of environmental assessment processes and regulated by the provinces with advice from DFO to ensure conditions are such that marine habitat is protected.

Creation of a List of Wastes Authorized for Ocean Disposal

Recommendation 8.25 proposes to add to CEPA a list of wastes that may be acceptable for ocean disposal. MAC agrees that clear policy direction is desirable, but the proposed approach would be unscientific, impractical and contrary to the government's policy of sustainable development and to the precautionary principle as articulated in the Rio Declaration. Firstly, actual or potential effects on and risks to the marine environment depend not only on hazard, which is an intrinsic property, but on the duration of exposure and the form and concentration of contaminants to which marine organisms are likely to be exposed. A hazard-based approach to marine disposal would therefore be inconsistent with the government's commitment to develop legislation based on sound science. Secondly, the precautionary principle provides that:

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

Far from supporting a focus on hazard, as suggested, the word "threat" requires consideration of risk as indicated above. The precautionary principle also requires consideration of cost. Thirdly, the government's policy of sustainable development also requires consideration of environmental risks and economic costs, both in the short and long term.

In our view, Parliament can best provide the desired policy direction by enunciating clear appropriate principles and establishing fair, predictable, timely and transparent processes by which government Ministers or officials can determine the scientific, technical, social and political acceptability of an ocean dumping application. The government should not ask Parliament to enact specific legislation that would unduly limit disposal options and could therefore impose an unnecessary social or economic burden on Canadian society in the future.

Given the above, MAC recommends that this provision not be included in the revised *Act*.

Environmentally Preferable and Practical Method

Recommendation 8.26 proposes incorporation of the Waste Assessment Framework into CEPA, and specifies that a permit would not be issued if opportunities exist to recycle, reuse or treat waste. At first glance this Recommendation appears remarkable, in that both risk and cost are considered for alternative disposal methods. In practise, however, these factors are most relevant when both the risks and the costs associated with alternative disposal methods are compared, and such a comparison is implied by the qualifiers "undue" risks and "disproportionate" costs. On this basis, MAC can support this recommendation subject to the qualification that the level of assessment for alternative approaches must be commensurate with the quantity and character of the waste concerned. Recycling, re-use or treatment are more likely to be practical alternatives where a significant volume of waste will be generated over an extended period of time, and these alternatives should be examined in more detail for wastes that may pose a higher level of risk.

Recommendation 8.27 would require an applicant to show that ocean disposal is the environmentally preferable and practical option, using the Waste Assessment Framework. We note that on the one hand, applicants would be required to provide a comparative assessment that considers all relevant factors. On the other hand, a permit would be granted only if ocean disposal is shown to be environmentally preferable, with the only economic consideration being implied by the word "practical". MAC can support the appropriate use of a Waste Assessment Framework, subject to the qualification that the level of assessment for alternative approaches must be commensurate with the quantity and character of the waste concerned as elaborated above, but a decision to grant or deny a permit for ocean disposal should be based on an assessment of all factors from a sustainable development perspective, rather than on the basis of environmental preference alone.

Disposal of Contaminated Sediments

Recommendation 8.28 proposes to continue consultation on national guidelines for disposal of contaminated dredge sediments. We note that natural geochemical and other transport processes may play a significant role in the natural contamination of river and harbour sediments in estuarine harbours. Exposure and risks to marine organisms depend on the form, solubility and bioavailability of the contaminant and should be considered on a site-specific basis. Site-specific information and studies will also be required to select an appropriate disposal site, but national guidelines would be useful to provide guidance concerning assessment techniques, desired characteristics of disposal sites and best practises for mitigating potential adverse effects arising from dredging and disposal of these high volume low risk wastes.

For all of these reasons, MAC strongly endorses this practical and low cost recommendation.

Ocean Disposal Fees

Recommendation 8.30 would introduce a sliding scale for disposal fees based on the nature and quantity of material dumped. We support this recommendation in principle, provided that the effectiveness and efficiency of the ocean dumping program is subject to periodic review to ensure that fair value for money is provided to permit applicants and grantees. In principle, we also support the use of cost recovery, provided that appropriate safeguards are in place (particularly for efficiency and transparency), and that environmental taxes and charges are not applicable here.

In addition, where a limited number of persons utilize a disposal site on a long term basis, those persons should have the flexibility to conduct a scientifically sound program to monitor the environmental effects of ocean disposal if it would be more cost effective to do so than to fund monitoring by or on behalf of Environment Canada.

Public Access to Information Pertaining to Ocean Dumping Permits

Recommendation 8.31 would establish a national ocean disposal data base as part of the public electronic registry. MAC strongly supports use of such innovative approaches with two minor qualifications. Firstly, notification through local newspapers should continue to be required, recognizing that not all local residents would have access to a public electronic registry. Secondly, all requirements to publish notices in the Canada Gazette, Part I should be deleted. That traditional legal mechanism is an ineffective means to communicate ocean dumping related notices or decisions to proponents or to the public and imposes unnecessary costs and delays on proponents and government alike.

Granting of Ocean Disposal Permits - Notification and 10-Day Objection Period

Recommendations 8.32 - 8.34 propose notification and objection stipulations regarding the granting of ocean disposal permits. In general, we support these stipulations as a means to improve timeliness and legal certainty for proponents and government while safeguarding the right to file any objections on a timely basis. With regard to Recommendation 8.32, we recommend that the 10-day period should follow publication in the electronic registry rather than in the Canada Gazette, Part 1.

Refusal by the Minister to Issue an Ocean Dumping Permit and Decision by the Minister to Suspend or Revoke a Permit or Vary its Conditions

Recommendations 8.35 - 37 define requirements for objections in the event that a permit is refused by the Minister, or the Minister suspends or revokes a permit or vary its conditions. MAC supports Recommendations 8.35 and 8.37. Recommendation 8.35 will ensure that all parties, including business, industry, port users or other members of the public, have an opportunity to check that all impacts of such decisions are considered. Recommendation 8.37 provides a practical means to improve openness, transparency and public confidence by increasing Ministerial accountability to the public. This low cost proposal would clarify the rationale for decisions that affect the interests of other parties and could avoid the need for or at least clarify the basis for any subsequent appeal to the Courts by an aggrieved party.

With regard to Recommendation 8.36, we understand the rationale for this proposal, but substantial costs and delay would be imposed by convening a Board of Review in all such cases, even if the objection or objections are neither frivolous nor vexatious. The Minister should continue to exercise discretion in considering such requests and should refuse to convene a Board of Review if the reasons for the request do not provide a reasonable basis to conclude that the decision may be inappropriate and should therefore be reconsidered. Applicants should have recourse to the Courts if the discretion of the Minister is not appropriately exercised, but additional costs and delays should not be imposed on proponents on the basis of a request that fails to disclose sufficient grounds for a Board of Review to be convened.

Chapter 9. Controlling Toxic Substances

Substances Meeting Persistence or Bioaccumulation or Other Criteria

Recommendation 9.1 outlines a proposed approach for categorizing and screening substances currently on the Domestic Substances List. We generally support the direction taken by the Government in response to the Standing Committee's report. However, we offer the following

additional observations and recommendations which we believe will clarify and enhance Recommendation 9.1.

Regarding 9.1 (i): As recognized, the criteria for persistence and bioaccumulation specified in the Toxic Substances Management Policy cannot be directly applied to inorganic compounds and sparingly soluble compounds. Substantial international discussions on an alternative framework for these compounds is continuing. A recent workshop (December, 1995) held in Belgium under the auspices of the Canada/European Union Metals and Minerals Working Group concluded that persistence and bioaccumulation, as they are currently defined, are not appropriate criteria for hazard identification of metals and metal compounds. Participants at this workshop also recommended that criteria and test methods must be further developed for assessing degradation of metals and metal compounds which occurs through physico-chemical transformation, and that parameters of test systems must be developed or refined to represent "reasonable" environmental conditions. Work on these issues is ongoing. For example, representatives of the metals industry have very recently released a paper entitled *Conceptual Approach to Hazard Identification of Metals and Metal Compounds*. A copy of this paper is contained in Appendix B.

We recommend that Canada continue to participate and take a lead role in developing an alternative framework for inorganic compounds and sparingly soluble compounds.

Regarding 9.1 (iii): In our view, a substance should not be declared toxic under CEPA unless it meets the conditions set out in Section 11 of the current *Act*.

We recommend that the current Section 11 conditions for declaring a substance "CEPA-toxic" be explicitly recognized in Recommendation 9.1 (iii).

Substances Banned or Restricted by OECD Countries or Canadian Provinces

Recommendations 9.2 and 9.8 propose to screen substances that have been banned or restricted in other OECD countries or Canadian provinces, and to deem these substances as toxic and subject to preventative or control action. We are unsure of the full implications of these Recommendations, particularly with respect to adopting approaches and decisions taken by other nations. Other countries have different legal structures, safeguards, lifestyles and values. In our view, information from other jurisdictions can serve as an important input into Canada's substance assessment process, but this information must be considered in light of Canadian exposure, criteria and conditions.

As such, we recommend that restrictions or bans by other countries should be viewed as an alert and a source of information, which must then be reviewed against Canadian exposure, criteria and conditions.

Deciding Which Substances are "CEPA-Toxic"

Recommendation 9.5 proposes to maintain the existing structure of Section 11 of CEPA, pending consultation with the Canadian public. In our view, this Recommendation is central to maintaining the direction provided by the *Toxic Substances Management Policy* and the Government of Canada's commitment to a risk-based approach to decision-making for substances.

We support the clear direction in Recommendation 9.5 that Section 11 conditions, including risk-based decision-making, be maintained in a renewed CEPA.

Regarding Recommendation 9.6, as noted in our comments on Recommendation 9.1 (i), the criteria for persistence and bioaccumulation specified in the Toxic Substances Management Policy cannot be directly applied to metals and metal compounds. (See the paper entitled *Conceptual Approach to Hazard Identification of Metals and Metal Compounds* in Appendix B).

Accordingly, we recommend that Canada continue to participate and take lead role in developing an alternative framework for inorganic compounds and sparingly soluble compounds.

Recommendation 9.9 would require users, producers and importers to provide available data for substances on the Domestic Substances List, and testing as part of assessments for substances on the Priority Substances List. We generally support the direction in Recommendation 9.9, but suggest that detailed safeguards are needed for justification, reasonableness and cost.

We recommend that safeguards for justification, reasonableness and cost be incorporated as part of this provision in the revised Act.

Recommendation 9.10 calls for a "stop-the-clock" provision that would temporarily suspend assessments for substances on the Priority Substances List. We support the proposed definition of timelines included in this provision.

To further strengthen the assessment process for substances under CEPA, we recommend that appeal mechanisms should be instituted at the following points: 1) once the assessment has been completed; and 2) once a substance has been added to the Toxic Substances List (Schedule 1). In the latter case, this mechanism would enable reassessment of a substance's Schedule 1 status in the event that new information or scientific evidence become available. The reassessment would be based on whether the substance continues to meet the conditions specified in Section 11 of the current CEPA.

In addition, we believe that it would be appropriate to establish a regular review process for Schedule 1 substances.

New Substances

Recommendation 9.11 proposes that CEPA be amended to enable mandatory reporting of significant new uses of substances. Our interpretation of Recommendation 9.11 is that the Government wishes to require mandatory reporting for uses for new substances, rather than significant new uses for existing substances. At a minimum, we suggest that clarification is needed as to the focus for this Recommendation. In addition, criteria would be needed to define what would constitute a *significant* new use.

More importantly, we note that in 1997 the Government will undertake a multi-stakeholder review of the New Substance Notification Regulations. It is our understanding that when the existing New Substance Notification Regulations took effect, any major changes to these provisions would arise from the multi-stakeholder review process.

As such, we recommend that inclusion of the provision described in Recommendation 9.11 be deferred until completion of the 1997 review process concerning the New Substance Notification Regulations.

Managing Risks Posed by Toxic Substances

Recommendations 9.14 and 9.18 would require that proposals for prevention and control be prepared, published and implemented for "CEPA-toxic" substances, within the defined timelines. While we support the need for prevention and control, we are concerned that these Recommendations appear to overlook prevention and control activities undertaken by other jurisdictions (particularly at the provincial and territorial level) and other bodies.

We recommend that these provisions be clarified to reflect the role that other jurisdictions and bodies would play in prevention and control.

Recommendation 9.17 would provide explicit federal authority to require submission of data on substances that have been declared "CEPA-toxic" and are already on the Toxic Substances List under CEPA. We believe that this provision is reasonable, provided that:

- the data collection authority is clearly tied to reassessment of a substance's Schedule 1 status (see our recommendation concerning 9.10); and
- that safeguards are included for justification, reasonableness and cost.

Chapter 10. Government Operations, Federal Lands and Aboriginal Lands

Chapter 10 provides clarification on what comprises the "federal house" and proposes changes in environmental management for federal facilities. In general, we support the direction and scope of the proposals in Chapter 10, and we are pleased to note that federal facilities will be subject to the same requirements as other operations and industries under a renewed CEPA.

However, we do have a concern with respect to the definition of "federal works" and the resulting jurisdictional implications. One of our member's operation has been declared a "federal works...for the advantage of two or more provinces." Our interpretation of Chapter 10 (*Federal Works and Undertakings*) is that this operation and new future mining operations declared "federal works" could become subject to additional federal authority and requirements under a renewed CEPA. For many years, the operation in question has worked satisfactorily under authorities granted to provincial regulators.

In view of the above, we recommend that in the case of mining operations, provincial and territorial authorities continue to retain primary responsibility for regulation and control.



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Rec'd-DCU-DOE

0-1025-31

March 16, 1996

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Dear Hon. Sergio Marchi,

Recu-UCM-MDE

I am writing on behalf of the Bruce Peninsula Environment Group about the government's proposed changes to the Canadian Environmental Protection Act (CEPA). Our group represents 100 members from the communities on the Bruce Peninsula in Ontario, a part of the Niagara Escarpment World Biosphere Reserve. Our region is both beautiful and fragile because of its geology and ecology. We work to preserve our environment through education at our monthly meetings and advocacy work to various government ministries and agencies.

We are very concerned that the legislative changes proposed for reform of the CEPA do not adequately guard the public against toxic pollutants and they do not give the Canadian people the tools to fight polluting industries in their communities.

We would like the proposals to be amended so that the federal government sets strong standards for allowable releases of toxics chemicals into the environment. We desire that a timetable be set to phase out the industrial use of chemicals, particularly chlorine compounds, that create toxic waste products.

We would like to see the creation of a Canadian Environmental Bill of Rights, similar to the one that exists in Ontario, to allow us to go to court to stop polluters in our neighbourhoods. A Bill of Rights would also mandate public access to information on all toxic chemical releases into the environment. This would much improve the present system in which only the largest releases are reported.

We would like the federal government to use CEPA to prevent the creation of pollutants rather than to control them after they have been released into our environment.

We believe that if the above proposals are adopted in CEPA, all Canadians will benefit. There will be fewer risks to our health, and we will reduce the money we must spend cleaning up polluted areas in our country. Thank you for considering our submission.

Sincerely,

James Molnar, BPEG Secretary



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Regu-UCM-MDE

Mar. 12, 1996

The Honourable Sergio Marchi
Minister of Environment
Room 101-S, Centre Block
House of Commons
Ottawa, Ont.
K1A 0A6

0-1025-1
0-1165-36/S157

Re: CEPA Review, The Government Response

Dear Minister Marchi,

Monsanto Canada Inc. is pleased to participate in the process of revitalizing the Canadian Environmental Protection Act. We support the direction for Biotechnology in Chapter 7 of the Government Response to the recommendations of the Standing Committee for a Renewed CEPA. We support the Government's objective to ensure that a regulatory regime is in place which promotes innovation, encourages investment in biotechnology, supports technology transfer, and places Canadians at a competitive advantage while ensuring safe and effective use. The Government decision to follow the 1993 Framework for regulating products of Biotechnology is very encouraging to industry.

Monsanto Canada Inc. offers the following comments in support of a revitalized CEPA.

The stated principle under Biotechnology Chapter 7, that there would be no overlap and duplication in regulating these products should be highlighted as a "fundamental principle". Who decides that there is no overlap? The closest department based upon the product should decide if regulatory oversight by CEPA is needed. For example, Forestry products should be Ministry of Natural Resources; Agriculture products by Agriculture & Agri-Food Canada; Novel Food by Health Canada as per the 1993 Framework. CEPA could act as a safety net for products not covered by other Acts " or not currently controlled through Federal regulatory guidelines and/or recognized Self Regulating Organizations (SROs)."

Under section 7.1, CEPA would regulate non-living products of Biotechnology where "regulatory authority" does not exist under other Federal Acts. In order to prevent confusion or unnecessary burden, regulatory authority should be defined as legislative or "guideline" regulatory authority. Multi-stakeholder working groups have agreed in the past that due to the rapid advancements in Biotechnology, regulatory oversight through guidelines is the most appropriate and efficient mechanism to provide rapid flexibility to ensure safety while supporting innovation and technology transfer.

Similarly under section 7.4; as a principle, a general safety net is not required where regulations are not required "or adequate guidelines exist". CEPA regulations should not apply based upon "such time as regulations are promulgated" if the products are not toxic by CEPA definition or guidelines exist.

Additional Amendments:

Cost Recovery - Directionally we support cost recovery; however, we have concerns with this section as stated and we recommend addition of the Treasury Board requirement to include a Business Impact Test prior to implementation of cost recovery.

International Commitments:

Under section 7.6, CEPA should not make regulations to "complement existing Federal Authorities to implement binding agreements..." This appears duplicative and existing Federal Acts should make regulations for binding agreements where appropriate. In addition, we do not support a binding protocol without a clear need. The recent Biosafety Protocol must be harmonized with existing North American guidelines and must not be an additional tier of regulation.

Under section 7.7, criteria through regulation under CEPA must not be established where current regulatory authority "or regulatory guidelines" exist under other Federal Acts as previously stated.

pg. 3

Development of Science Base:

Authority to establish a national science base under CEPA is a positive direction. However, the science base must share only "non-proprietary" data unless permission by the data owner is granted.

We trust that these comments will be considered during the implementation of a renewed CEPA.

Yours truly,
MONSANTO CANADA INC.



Robert Ingratta, P.Ag.
Director Government Relations

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: George Moore

Address: Box 535, Middleton, N.S.

Bosipo

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: David Moran

Address: 51 King street

Middleton box 266

1305 1P0

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd-DCU-DOE
MAR 25 1996
Regu-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Rick Morrell *Rick Morrell*

Address:

27- 2210 - 15th Ave.

Regina, Sk.

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Edwin W. Moss D.V.M., M.S.
Chairman
Board of Directors
Veterinary Infectious Disease Organization
120 Veterinary Road
Saskatoon, Sask, S7N 5E3

March 23rd 1996

The CEPA Office
Environmental Protection Service
Environment Canada
Ottawa, Ontario
K1A 0H3

Re: CEPA Review: The Government Response


I am writing to express my concern over the Government response to the recommendations of the Standing Committee on Environment and Sustainable Development outlined in its Fifth Report.

In particular, I am concerned about the broad and vague definition of a biotech product contained in chapter 7 of the CEPA Review. This definition, if entrenched, will allow a wide range of interpretation which could be used to delay or obstruct progress by people who do not understand the science or view all biotechnology as a potential hazard or risk. Would it not be better to review each biotech submission on its own merit in consultation with industry and the scientific community?

If a definition is considered essential, I feel it should be more clearly defined and arrived at with input from scientists and industry. The concept that all biotechnology is a risk and needs to be regulated by some safety net, catch-all form of regulation will ultimately result in unwarranted costly delays that will ensure Canada will become an importer rather than an innovator of scientific change.

Thankyou for considering these concerns.

Yours Truly


Edwin W. Moss
Fax 403 362 7617

cc Ron Clark
file

MOTOR VEHICLE MANUFACTURERS' ASSOCIATION

March 22, 1996

25 Adelaide St. East
Suite 1602
Toronto, Ontario
Canada M5C 1Y7
Tel. (416) 364-9333

The Honourable Sergio Marchi
Minister of Environment
Environment Canada
Les Terrasses de la Chaudière
10 Wellington Street
Hull, Québec K1A 0H3

The Honourable David Dingwall
Minister of Health
Brooke Claxton Building
16th Floor
Tunney's Pasture
Ottawa, Ontario K1A 0K9

Dear Ministers:

The Motor Vehicle Manufacturers' Association (MVMA) appreciates the opportunity to provide comments on the CEPA Review: The Government Response document entitled "Environmental Protection Legislation Designed for the Future - A Renewed CEPA - A Proposal".

The MVMA is a national trade organization representing seven member companies (listed below) who manufacture light and heavy duty vehicles in Canada. Our member companies collectively employ more than 72,000 Canadians in vehicle assembly, with the vast majority of that employment in Ontario. The industry as a whole employs more than 540,000 Canadians and accounts for 1 in 7 jobs in Canada. The auto industry's Canadian investment from 1991 to 1993 was approximately \$6.5 billion and the motor vehicle industry accounted for more than 4% of the Canada's GDP. Automotive manufacturers' investments over the past decade exceed \$15 billion which translates into \$2 billion in capital expenditures per year on average over the last five years.

The MVMA supports amendments to the *Canadian Environmental Protection Act* (CEPA) with the objective of better protecting the environment and enhancing environmental quality based on sound scientific principles. However, any such amendments must also take into account the practicality of implementing the proposed changes, the socio-economic circumstances, and the impact on Canadian industry's competitiveness in a North American as well as global market place. The MVMA supports the government recognition in the Response document of the linkages between economics and environmental protection.

The government response document outlines a number of proposed changes to the Act but does not establish relative priority. In our opinion, grouping and prioritization of the proposals is necessary to ensure that limited government and industry resources are used in the most cost effective and efficient manner to maximize the protection of the environment. If proposed changes are not thoroughly evaluated, there is the potential that the changes could significantly increase the cost of doing business in Canada and have negative competitive consequences.

Members:

- Chrysler Canada Ltd.
- Ford Motor Company of Canada, Limited
- Freightliner of Canada Ltd.
- General Motors of Canada Limited
- Mack Canada Inc.
- Navistar International Corporation Canada
- Volvo Canada Ltd.
- Western Star Trucks Inc.

In general, MVMA is also supportive of the guiding principles of sustainable development, biodiversity, adoption of an ecosystem approach to the environment, intergovernmental cooperation, economic responsibility, the use of science and the precautionary principle outlined in the government response. However, the MVMA is concerned about the guiding principles of pollution prevention and user-producer responsibility. These two principles require a thorough review before being incorporated into the *Act*. Furthermore, we are unsure how these principles will be interpreted by decision makers and as such are uncertain of their impact on future policy in Canada.

The MVMA supports the federal government's leadership in regulating fuels. We believe that this is an important and positive step in ensuring that consumers have the appropriate fuels to support the vehicle emissions control equipment and will result in cleaner air. It is the MVMA's strongly held view that motor vehicle emission standards, must be harmonized with the majority of the U.S. market.

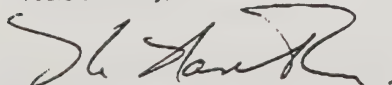
With regard to the transfer of legislative authority for vehicle emissions to *CEPA*, the MVMA does not support this recommendation as written. It is our opinion that the control of emissions should remain with Transport Canada where the knowledge and expertise on emissions hardware and safety issues reside, with required policy input coming from Environment Canada in order to support a "total systems approach" to vehicle emissions control and fuel specifications.

MVMA would like to note that numerous proposals in Government Response do not require legislative change and could be handled as a matter of policy.

Our detailed comments on the *CEPA* Government response on issues which affect the automotive industry are attached herewith. Issues of concern include the precautionary principle, the narrow definition of pollution prevention, public participation, the broadened information gathering powers, enforcement, voluntary pollution prevention, the environmental aspects of emergencies and the management of hazardous and non-hazardous wastes.

It is hoped that our comments will be taken into consideration in proposing changes or amendments to the *Canadian Environmental Protection Act*. The MVMA also hopes to continue to participate in the *CEPA* review process as the legislation is drafted and in the event any public consultations take place. Furthermore, we would be pleased to meet with you and your staff to discuss any issues which require clarification or to provide you with any further information you may require.

Yours sincerely,



Mark A. Nantais
President

MVMA Submission On "CEPA REVIEW: THE GOVERNMENT RESPONSE"

The Motor Vehicle Manufacturers Association (MVMA) has reviewed the "CEPA Review: The Government Response Document" and respectfully submits the following comments on the sections as set out in the government response.

While the MVMA supports a number of the proposals in the Government Response, there remain numerous areas of significant concern to the MVMA. For example, we support the recommendation in Chapter 4 enshrining the NPRI as an explicit statutory requirement in CEPA but are concerned about the broadened information gathering powers outlined in the same chapter. The MVMA comments which follow address recommendations in the Government Response which affect the automotive industry.

Part One. Overview - Introduction:

MVMA believes that the section on Jobs and Growth and "Good Regulation" (page 4) which references the article by Michael Porter is misleading in that it implies that a heavy reliance on regulation is the best approach to environmental protection. We believe that voluntary approaches and economic instruments can be just as or more effective in stimulating innovations and assisting business to become more competitive while at the same time protecting the environment. In order for the assertions by Mr. Porter to be valid, one would have to assume that federal and provincial regulations are harmonized and consistent with those of other jurisdictions and that minimal resources are consumed in the regulatory process. This is not the current situation in Canada. We believe that a good mix of regulatory, voluntary and economic instruments will result in jobs, growth and protect the environment and allow Canada to be at the leading edge of sustainable development in the global marketplace.

Chapter 1 - Guiding Principles for an Effective CEPA

MVMA is supportive of several of the guiding principles outlined in the government response document. These include sustainable development, biodiversity, adopting an ecosystem approach to environmental management, the use of science and the precautionary approach, economic responsibility and using pollution prevention as the priority approach to environmental protection.

Sustainable Development:

MVMA supports the concept of sustainable development and believes the use of the Brundtland definition outlined in the government response is directionally correct.

Ecosystem Approach and Biodiversity Principle:

MVMA is supportive of incorporating the principles of biodiversity and ecosystem approach in the Preamble of the Act recognizing that human health is a priority. We believe that the priority focus on human health will ensure that decisions are made with a clear objective in mind.

Intergovernmental Cooperation:

MVMA supports recommendation 1.5 pertaining to the intergovernmental cooperation between the different levels of Canadian government. We believe that this recommendation should not be limited to the Canadian context but extended to include other jurisdictions internationally. We believe this will serve to acknowledge the increasing shift to global economies, the globalization of environmental issues and increased need for cooperation internationally.

MVMA Submission On "CEPA REVIEW: THE GOVERNMENT RESPONSE"

In our opinion, the federal government should take a leadership role in avoiding duplication, overlap and inconsistencies in environmental legislation in Canada while focussing on the most cost efficient measures to protect the environment. Unfortunately, the following areas in the government response do not reflect this principle: environmental aspects of emergencies, the movement of hazardous and non-hazardous wastes, international air and water pollution and others. We believe that the CCME Environmental Management Framework Agreement is an action which can be taken now to assist with clarifying and sorting out the federal and provincial roles and responsibilities. It will not only be consistent with the philosophy of intergovernmental cooperation outlined in the government response but will provide a level of predictability and certainty for businesses who are looking to invest in Canada.

Science and the Precautionary Principle:

MVMA strongly supports the recognition of the role that science must play in the decision-making process under CEPA. We believe that this is a positive step and will result in a more effective CEPA.

With respect to the precautionary principle, MVMA supports the UNCED definition and agrees with the proposed changes as outlined in recommendation 1.7 of the government response.

Economic Responsibility:

MVMA supports recommendation 1.8 in that recognition is finally given to the strong linkages between economics and the environment in any decision-making process. We believe the proposal as outlined in the government response will re-inforce the need to take into account economic considerations in making decisions under the Act. Furthermore to ensure a consistent approach with government guidelines, we believe that the Act should be aligned with those of the Treasury Board guidelines as presented in the "Benefit-Cost Analysis Guide for Regulatory Programs" of August 1995.

Pollution Prevention:

MVMA supports using pollution prevention as one of a number of instruments available for environmental protection. We recognize the importance of pollution prevention and support the movement away from end-of-pipe controls where possible. Acknowledgment that pollution prevention is not a stand-alone strategy nor the answer to all environmental problems is viewed positively. However, we are concerned about the narrow definition of pollution prevention and its implications. We believe that reuse and recycling should be part of the definition of pollution prevention. The definition as it stands, in our opinion, fails to promote reuse and recycling options. In some cases, recycling or reuse may not be a viable option for the generator given resource or space limitations. In many cases, external companies also have greater expertise to deal with a particular material than the generator.

Our member companies have been and continue to recycle such items as purge solvents used for cleaning lines prior to changing colour in our painting operations. The most cost-effective method of recycling is to ship the material to an outside contractor for separation of the contaminants from the solvent and then have the solvent returned for re-use. These contractors have specialized equipment and expertise for performing this function in a safe, efficient and cost effective manner. The definition included in the proposed changes to CEPA would not recognize such recycling initiatives as pollution prevention even though there is a significant

MVMA Submission On "CEPA REVIEW: THE GOVERNMENT RESPONSE"

reduction in the amount of waste generated, resources are conserved and the potential for adverse environmental impact is virtually eliminated. We strongly believe that the definition of pollution prevention must be expanded before incorporation into *CEPA*.

User Producer/Responsibility:

MVMA does not support the inclusion of the term user/producer responsibility as a guiding principle of *CEPA* as there is currently no agreed upon definition of this term. Clarification is required as to whom and how the concept of user/producer responsibility would apply prior to the inclusion of this principle. Users and producers have different information and abilities with respect to dealing with substances or materials. As producers have greater information and ability than users, users should not have the same responsibilities as producers.

MVMA would be pleased to actively participate in discussions with government officials on the concept of user/producer responsibility. As our member companies use chemicals and other materials in our manufacturing process, we believe that the auto industry could provide valuable insight in any discussions on this concept.

Chapter 2 - Administration

MVMA believes that the administration of *CEPA* should not become burdensome to those to whom it applies. There is a clear need for simplified processes without overlap and duplication so that the limited resources of government and industry may be used most effectively. Our comments on this chapter are limited mainly to the following : economic instruments, non-regulatory approaches, equivalency agreements and cost-recovery.

Equivalency & Administrative Agreements/General Agreements for Environmental Management:

MVMA supports the use of equivalency and administrative and general agreements for environmental management in *CEPA*. We believe that this is consistent with the principle of intergovernmental cooperation discussed in the government response document. In our opinion, these agreements should be evaluated to ensure that they are consistent, cost-effective and not overly burdensome to those to whom they apply.

However, we question the need to address these agreements now especially since the CCME Environmental Management Framework Agreement (EMFA) would address such arrangements. In our opinion, government resources could be more effectively used in finalizing the EMFA. In turn, in the long run it would minimize administration of various bilateral agreements and allow for harmonization, greater consistency, better use of resources and minimize or avoid overlap and duplication in regulation.

Administrative arrangements should undergo a review rather than an automatic sunseting. The involved parties could determine whether to continue or sunset the arrangement after the review. This would save both time and resources in the long run.

MVMA Submission On "CEPA REVIEW: THE GOVERNMENT RESPONSE"

Economic Instruments:

MVMA supports recommendation 2.13 with respect to the use of economic instruments for environmental protection subject to federal constitutional authority. We also agree that the proposals for use of economic instruments such as environmental taxes and charges or financial incentives in the form of tax measures should remain the responsibility of the Minister of Finance and any implementation be coordinated with the Government's tax policy.

We believe that economic instruments should only be developed and implemented where found to be the most cost effective option to addressing a particular environmental problem. Before any economic instrument is proposed, a thorough cost-benefit analysis should be conducted and the socio-economic, trade and competitiveness impacts should be weighed against the intended environmental protection objective.

Non-Regulatory Approaches to Environmental Protection:

The MVMA was pleased that non-regulatory approaches to environmental protection are recognized in the government response. Non-regulatory approaches should continue to be emphasized as an effective means of promoting pollution prevention. Furthermore, this type of non-regulatory approach should not be limited to non-regulated aspects of substances. MVMA hopes that non-regulatory approaches will be specifically recognized when the legislation is amended.

As you may be aware, the MVMA has been engaged in a number of voluntary agreements with the federal and/or provincial governments. A memorandum on light duty motor vehicle emissions was signed in 1992 and a memorandum on voluntary pollution prevention for automotive manufacturing facilities was signed in May 1992. Our experience has shown that non-regulatory approaches can achieve the same or better results than regulatory approaches.

For non-regulatory approaches to be successful, they should not be prescriptive and should allow companies flexibility in seeking innovative and creative solutions for a particular environmental condition. Onerous reporting obligations should be avoided as they may be viewed as a disincentive to participation. The potential threat of legislation also operates as a strong disincentive to company participation in non-regulatory approaches to pollution prevention as it creates an uncertain business environment which makes it difficult for companies to determine the most appropriate pollution prevention activities. Companies who participate in voluntary actions may also be penalized, at least in public perception, for their decreasing ability to implement further cost-effective actions.

We believe with respect to recommendation 2.14 that there is no need to incorporate voluntary agreements within the *Act*. The voluntary MOUs in which MVMA is engaged in demonstrate that such a provision is unnecessary.

Cost Recovery:

MVMA is extremely concerned over the recommendation 2.17 and other recommendations in the government response regarding cost recovery. The *Financial Administration Act* allows for recovery of costs of services provided by the government. It is therefore unnecessary to provide specifically for cost recovery in the *Act* since it is already covered by existing federal government legislation. In addition, it would be premature to provide for cost recovery in the *Act* prior to clarifying who would be responsible for payment of costs, how fees would be set, what

MVMA Submission On "CEPA REVIEW: THE GOVERNMENT RESPONSE"

services would be covered, how cost recovery would be controlled so that there would not be uncontrolled use of cost recovery, and the rationale and justification for including cost recovery in CEPA.

Chapter 3 - Public Participation

MVMA strongly disagrees with many of the recommendations with respect to public participation and citizens' rights. The federal jurisdiction in the area of environment is considerably more limited than the provincial powers. Where there is a provincial public participation system, this raises the possibility of a duplication and inefficient use of resources. In addition, there is a very effective public federal process currently in place through the *Canada Gazette* unlike the provincial processes. As a result, it is unclear that there is a need for greater public participation at the federal level.

Access to Information by the Public/Public Registry:

MVMA does not disagree with the development of a electronic public registry of environmental information to be used in the same way as the *Canada Gazette* is used. We, however, do not support the development of a federal electronic public registry similar to the *Ontario Environmental Bill of Rights* (EBR) and are concerned that a federal EBR is being proposed in recommendation 3.1. The Ontario EBR experience has been found to delay the implementation of projects, including preventative or proactive environmental measures, even without intervention, to be expensive to both industry and government and to be ineffective. It is our understanding that under the Ontario EBR, over 2000 instruments have been placed on the registry and less than 2% have received comments. Given the experience with the Ontario EBR, it is unclear that a federal EBR will be an effective use of limited government resources, particularly since the *Gazette* is already an effective tool. Furthermore such a duplication by the federal government would only serve to further delay implementation of projects and fail to protect the environment.

We are concerned with the recommendation 3.3 with respect to cost recovery measures to maintain the public registry. We believe clarification is required on the application of this measures. Our comments in Chapter 2 under cost recovery also apply here. (see page 4)

"Whistleblower" Protection:

MVMA is concerned about the addition of a "whistleblower" protection of CEPA which includes protection from disclosure of the identity of any person who requests anonymity. Currently, the voluntary report provisions of CEPA protect the identity of any person reporting an occurrence of a release or likelihood of a release. Additional provisions providing for anonymity could be subject to abuse. In practice, an "anonymous" tip should not be given the same weight as tips where anonymity is not required, particularly since legislation generally provides that employees reporting contraventions are protected from reprisals.

The Right to Sue:

MVMA believes it is unnecessary, duplicative and inappropriate to include "right to sue" provisions in CEPA. Section 131 in CEPA provides for compensation for loss of property for any persons as a result of the commission of the offense where there has been a conviction. The federal government has an Environmental Auditor whose responsibility includes providing

MVMA Submission On "CEPA REVIEW: THE GOVERNMENT RESPONSE"

citizens with a recourse if the government does not meet its commitments to enforce the environmental laws. In addition, there are numerous existing common law public and private civil "right to sue" actions such as nuisance and tort actions. A federal "right to sue" provision would be an intrusion into an area traditionally handled by the provincial governments and would be best characterized as a matter of "property and civil rights". Incorporation of a federal "right to sue" would duplicate existing legal remedies and by intruding on provincial jurisdiction, would conflict with the principle of federal/provincial cooperation. Finally, a "right to sue" action would be of limited, if any, benefit to the environment.

In the event that "right to sue" provisions are included in *CEPA*, and the MVMA strongly recommends that this is unnecessary, such provisions should be modelled on the *Ontario Environmental Bill of Rights* provisions as suggested in recommendation 3.9. The Ontario EBR provisions were developed after extensive consultations involving all stakeholders. These provisions should be limited to *CEPA* and include the safeguards in the Ontario EBR.

Dispute Resolution as an Alternative to Civil Suits:

MVMA disagrees with the civil right to sue in *CEPA*. MVMA also disagrees with the need for legislated alternative dispute resolution measures in order to accommodate the objectives of citizens' suits. To be effective, alternative dispute resolution should only be used where the parties to any action both agree that the alternative dispute resolution is appropriate. Alternative dispute resolution may encourage frivolous and improper use of *CEPA* to obtain funding while not resulting in any positive impact on the environment.

Civil Remedy of Risk:

MVMA disagrees with the comments in the government response with regard to the civil remedy for environmental risk. The recommendations are inconsistent with Canada's common law principles of civil liability and should not be included in *CEPA*. A defendant should not be required to disprove causation of injury to a plaintiff. In many cases, particularly where damage may be attributed to any of a number of causes, a defendant will be unable to disprove causation even if not actually responsible for the damage. This would also appear to be primarily a matter of property and civil rights and should be dealt with as a provincial matter.

The Right to Prosecute:

MVMA supports recommendation 3.10 in the government response that incorporation of a right to prosecute in *CEPA* would fetter the discretion of the Attorney General.

Other Public Rights:

With respect to other public rights, we believe that the review of regulations should not be required as, unlike Ontario legislation, *CEPA* includes sunset provisions and times for review. A public right to review regulations would, therefore, be an inefficient and duplicative use of government resources. With respect to public participation, it is unclear that the current process of written comments is ineffective. This is a far more cost effective method of public participation than intervenor funding.

MVMA Submission On "CEPA REVIEW: THE GOVERNMENT RESPONSE"

Chapter 4 - Ecosystem Science and National Norms

MVMA is supportive of the discussion on ecosystem approach with a priority given to human health. We were particularly pleased that emphasis was given to the importance of sound science in decision-making.

Authority for the Minister to Require Submission of Information for Research and Publication;

MVMA is concerned over the broadened information gathering powers being proposed for the Minister in recommendation 4.2. We believe that the requirement to submit data in one's possession or control should be voluntary rather than mandatory. It is our view that a mandatory requirement would operate as a disincentive to companies to collect information as the requirement to provide information in companies' possession or control could be extremely costly. The existing language in section 15 of CEPA is sufficiently broad to enable the Minister to obtain any required information to assess toxicity. Any additional powers to collect information should be only required in very specific circumstances. The cost of complying with such a provision would be extremely onerous to business. As a result, the government should be required to justify any additional requests on the basis that the information is necessary, cannot be obtained in any other fashion, and that the benefit of the information exceeds the cost of collection to business.

Should this recommendation be adopted for mandatory data submission, the MVMA strongly believes that it will be a disincentive to the collection of information, particularly for pollution prevention purposes and will represent an unacceptable additional cost to business.

National Pollutant Release Inventory (NPRI);

MVMA strongly supports the recommendation to include the NPRI in CEPA. The legislative basis of NPRI in CEPA will assist in eliminating the interpretative confusion, the inconsistency of approaches and the uncertainties as to the specific reporting requirements which have been experienced with the NPRI.

We also strongly support the proposal to use a multi-stakeholder consultative process for changes to the NPRI and any other national inventory. We believe that the consultative process is best handled by re-establishing the advisory committee with significant industry involvement to review and update the reporting rules on a periodic basis (once every three years) as well as for the public report. Frequent changes to the reporting requirements will jeopardize the usefulness of the NPRI for determining progress. In addition, we believe that NPRI should not be changed unless there is a value added with respect to environmental protection. The timing of the *Gazette Notices* should be such that any additional information requirements are provided well in advance of the reporting year. With respect to reporting to the public, the government should provide some context on relative toxicity of the substances released to ensure that the public is not misinformed.

Requests for Confidentiality;

With respect to recommendations 4.4, 4.5 and 4.6, given the breadth of the information which may be requested, it is essential that the process for protection of information be clarified. The scope of the current information gathering activities undertaken by Environment Canada under CEPA raises some serious concerns with respect to the proprietary nature of the data submitted.

MVMA Submission On "CEPA REVIEW: THE GOVERNMENT RESPONSE"

This concern is amplified by any proposed expansion of those activities. Unless care is taken, there is considerable danger that a skilled reader of the data submitted could effectively extrapolate production information that has direct competitive value. In addition, publication of data without necessary safeguards can provide the strategic reader with detailed, proprietary information respecting the nature of and efficacy of processes and innovations. To the extent that information about planned process changes are mandated, the strategic reader can anticipate product changes that have immediate competitive importance.

In our view, preservation of the integrity of the information gathering processes demands that information provided be protected. Under no circumstances should information provided pursuant to Environment Canada's data collection programs be subject to any less protection than that normally afforded to information provided to the Government in other contexts. If a claim is raised that information provided is confidential and should not be disclosed, that claim should be respected until disproved. This model is consistent with that governing the *Access to Information Act*. A strong argument can be made that, because of the intimate relationship between environmental data and production and process information, raw data should be presumed to be confidential until it is formatted in such a way so as to protect its use as a key to proprietary or competitive information. The proper use of this materials is in a Report which respects the legitimate proprietary and competitive interests of those submitting data.

Chapter 5 - Enforcement

In general, MVMA recognizes the need for enforcement but is concerned that many of the proposals outlined in this chapter are based on the U.S. context, which is significantly different from the Canadian context, without any recognition of, or accommodation for, the effect of these significant differences.

Administrative Monetary Penalties and Negotiated Settlements:

MVMA strongly disagrees with including provisions in *CEPA* to provide for administrative monetary penalties or negotiated settlements. This U.S. model for enforcement has proven to be costly for both industry and government and neither effective nor efficient at protecting the environment. More time is spent generating paper than taking preventative environmental actions.

CEPA currently contains provisions allowing for prosecution by summary conviction or indictable offense. Summary conviction proceedings are similar to the U.S. administrative penalties. It would be duplicative to add a third category of "administrative offenses". Further, calling an offence "administrative" would not decrease the prejudicial impact on business.

With respect to negotiated settlements, the MVMA strongly disagrees with the approach proposed in sections 5.4 and 5.5 in the government response. *CEPA* currently contains a mechanism to require preventative or corrective actions where there is a release or possible release of a substance. This part of the *Act* could be strengthened, along the lines of the Ontario program approvals approach, if necessary, to address the perceived need to facilitate the development and implementation of action plans to remediate existing violations and prevent future violations.

MVMA Submission On "CEPA REVIEW: THE GOVERNMENT RESPONSE"

Ticketing:

MVMA does not agree with incorporation of the concept of ticketing into *CEPA* as it is unclear what level of fines would be payable, what offences would be ticketable and what would be the government enforcement policy. The government should focus its enforcement activity on protecting the environment rather than ticketing for administrative non-compliance which has no impact on the environment.

Cease-and-Desist Orders:

MVMA does not disagree with the recommendation to amend *CEPA* to provide for cease-and-desist orders but we believe that this authority should be limited to senior officials and should only be exercised where the senior official, on reasonable and probable grounds, is of the opinion that there is a discharge that constitutes an immediate significant danger to the environment or human health. Such a standard would be more consistent with provincial legislation such as the *EPA* stop orders. A cease-and-desist order is a very powerful tool as it enables regulators to effectively shut down business operations without proving a violation of the *Act*. The preceding limitations are required to ensure that the power of authority is not abused where there is no contravention of the *Act*. In addition, there should be an expedited appeal process to the Minister in the event a cease-and-desist order is issued.

Guidelines for Sentencing:

With respect to recommendation 5.12, the MVMA does not support the amendment of *CEPA* to include sentencing criteria. The principles for sentencing are well defined in existing case law. It is unnecessary and inconsistent with other federal and provincial legislation to include sentencing guidelines within *CEPA*.

Environmental Fund:

MVMA strongly disagrees with recommendation 5.14 which proposes broadening the discretion of the courts to direct how awards imposed for violations would be spent. We believe it is inappropriate to suggest that the funds could be allocated to environmental, health or other groups to assist with their research.

Chapter 6 - Pollution Prevention

As already stated, MVMA is supportive of pollution prevention being one of the many instruments available for environmental protection. We strongly believe that pollution prevention should be **voluntary**. The government role should be limited to identifying "toxic" substances based on sound scientific principles. Business should then determine on a voluntary basis actions to deal with such toxics. We are particularly concerned about the narrow definition in the government response which excludes re-use and recycling as noted in more detail in our comments on Chapter 1. MVMA is also extremely concerned about many of the other recommendations outlined in this chapter of the government response.

Pollution Prevention Planning in CEPA:

As you may be aware, the MVMA and its member companies were the first industry sector to sign a Memorandum of Understanding (MOU) on voluntary pollution prevention to reduce and/or

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eliminate the use, generation and release of substances of concern in their auto manufacturing facilities to improve the environment in the Great Lakes basin. The recognition in the government response that "pollution prevention planning should become a self-sustaining business practice rather than a regulatory burden to industry or an enforcement on governments" is viewed positively by our members. It is our view that in order for pollution prevention planning to become self-sustaining it should be voluntary and not mandatory in CEPA.

Pollution Prevention Planning for CEPA Toxic Substances:

It is unclear in recommendation 6.1 whether pollution prevention planning for CEPA toxics would be mandatory or voluntary. We suggest for CEPA toxics that the pollution prevention planning should be dealt with on a non-regulatory basis through voluntary agreements.

Our voluntary MOU has shown that pollution prevention requires a change in attitude on how business conducts their day-to-day operation and a change in individual behaviour. In theory, pollution prevention plans can, if properly designed and delivered, identify options to minimize or avoid the creation of pollution or waste. However, in practice, this is not necessarily the case. We have found that there is no "right way" to plan or implement pollution prevention and have great difficulty understanding how one can regulate an attitude under the Act. We believe that legislating pollution prevention planning for even CEPA toxics will restrict innovation. The requirement for pollution prevention planning is also not an assurance of successful implementation.

Voluntary pollution prevention allows for creativity and flexibility for business where economic and environmental priorities can be balanced in the context of overall business plans and design cycles for overall competitiveness in a global market place. It also enables industry to utilize a variety of options to compliment and go beyond the requirements of existing programs, in the most cost effective manner. Based on our members' experience, we strongly believe that mandating pollution prevention planning will not ensure success. Pollution prevention is integrated so closely with manufacturing process and design that it is impractical for governments to regulate effectively in this area.

We are concerned with the statement that the pollution prevention approach will "identify options to minimize or avoid the creation of pollutant or waste" (on page 44) as it clearly implies use reduction. While the MVMA members have incorporated "use reduction" in their MOU, it must be recognized that under certain circumstances bans and phase-outs of substances may not be feasible given the technological limitations or the performance demands placed upon certain products. Incremental release reductions via pollution prevention are important especially where the substance is difficult to remove because it may be the only material that meets specific customer requirements.

MVMA does not agree with recommendation 6.2 where the Minister would specify the requirement for a pollution prevention plan via a Canada Gazette Notice. We believe that discussion should be held with the key sectors who have been identified and that the pollution prevention actions should be voluntary and not regulatory. The item that needs to be addressed should be clearly identified to ensure that there is a level playing field. The economic implications of such a requirement should also be taken into consideration to ensure that pollution prevention is not a competitive barrier.

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Pollution Prevention Plans for Infractions of CEPA:

It is important to recognize that development of a plan can be very costly and takes away valuable human resources for non-value added activities without any assurance of environmental benefit or improvement.

Model Pollution Prevention Plans:

The MVMA does not support developing guidelines for model pollution prevention plans as outlined in recommendation 6.4. There is no "one" model or standard methodology to develop pollution prevention plans that can be applied to all businesses. Pollution prevention plans have to meet the particular needs and conditions of the particular sector and "one does not fit all". We question whether this is a situation where government is dictating how business should operate.

In our opinion, this is a costly administrative exercise which may have no beneficial effect on environmental quality.

Submission of Pollution Prevention Plans:

MVMA disagrees with recommendations 6.5 and 6.6 on submission of pollution prevention plans. The requirement to submit plans removes the flexibility afforded by voluntary pollution prevention and will most definitely restrict creativity and innovation. We believe that valuable resources will be taken away from seeking and implementing environmental improvements to filing and preparing reports to the government.

In addition, it is our opinion that the usefulness of any plans submitted will be questionable as companies will be hesitant to share information of importance for a variety of reasons (competitiveness, proprietary rights, etc.). Submission of any pollution prevention plan should be voluntary. Mandatory submission could be viewed as government intrusion in business operations and may result in a lack of trust. Given the fiscal restraints on government, how the plans are to be used or reviewed needs to be clarified and the value of imposing this requirement requires justification.

Tracking of Progress on Pollution Prevention:

MVMA believes that reporting of pollution prevention activities through the National Pollutant Release Inventory should be entirely voluntary. NPRI is an inappropriate mechanism for mandatory reporting on pollution prevention. Various federal/provincial programs such as the Great Lakes Pollution Prevention Initiative could be used to report such activities on a voluntary basis without amendment to CEPA.

Pollution Prevention Targets and Schedules:

We believe that it is inappropriate for the government to include the Business Council for Sustainable reduction targets in the Act.

Technology Development and Transfer:

MVMA does not disagree with the concept of technology development and transfer. However, we are concerned that recommendation 6.9 means that government subsidies will be provided

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for "clean technologies". MVMA does not support the use of subsidies especially in these times of fiscal constraints and believes that cost recovery from applications should be applied in this situation.

Voluntary Pollution Prevention:

MVMA supports the need for a national pollution-prevention information clearinghouse. However, question the need to develop one when The Great Lakes Pollution Prevention Centre already exists and provides all of the services outlined in the recommendation. In our opinion, the recommendation is merely a formality to recognize the Pollution Prevention Centre based in Samia which has been in existence since 1992. It is unnecessary to amend the *Act* to achieve this objective.

Recognition and Awards:

It is unnecessary to amend *CEPA* to establish an awards program to recognize achievements in improving environmental performance. It should be recognized that initiatives are constantly evolving and rather than having such a program as part of the *Act*, it should be handled simply as a matter of policy.

Environmental Aspects of Emergencies:

The recommendations in this section appear to duplicate existing provincial infrastructure and requirements with respect to environmental emergencies. It is recognized that federal involvement may be needed in certain emergency situations. We would suggest that federal participation is best handled via intergovernmental cooperation rather than changes to the *Act*.

Prevention, Preparedness, Response and Recovery Framework (P2R2):

MVMA disagrees with recommendation 6.12 pertaining to dealing with environmental emergencies except with respect to federal sites. Responding to environmental emergencies should be a provincial matter since in most cases, there will not be a national responsibility. The federal government should not duplicate provincial requirements.

Standards, Guidelines and Codes of Practice:

With respect to recommendation 6.14, MVMA believes that MAICC may not be appropriate for all sectors or all sizes of industries.

Site Identification and Registration:

MVMA does not support recommendation 6.16. During the NPRI multi-stakeholder advisory committee discussion this issue was one on which there was no agreement. Identifying sites does not improve environmental quality. In fact, the risk of environmental damage may increase because sites may be tempted to lower inventories by having more shipments of smaller containers when environmental impact may be minimized by doing the opposite. The recommendation presumes risk is directly proportional to quantity stored which is not the case. Many other factors such as quality of storage systems, management techniques and emergency controls are at least as important if not more important.

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This requirement may also raise concerns in local communities and lead to unnecessary opposition to responsible development. The focus of environmental requirements ought to be on environmental performance and not administrative reporting exercises.

Reporting of Spills, Leaks and Other Such Incidents:

MVMA believes that a national spill-reporting network would duplicate existing provincial requirements. In case of a spill, the first priority should be to notify the provincial agency. This agency in turn could notify the federal government. Appropriate federal/provincial agreements under which the provinces notify the federal government of specified incidents would be a more appropriate approach to ensuring federal notification.

Recovery of Cost of Damages from Spills, Leaks and Other Such Incidents:

With respect to recommendation 6.18, the MVMA does not object to the right of the Government of Canada and other persons to recover costs and expenses actually incurred as long as the measures taken are reasonable, as set out in the *Canada Shipping Act*. However, the right to recovery should only be against the polluter, the person who is responsible for the release. There should be no expanded liability to owners or others who were not directly responsible or incorporation of joint and several liability.

Chapter 7 - Biotechnology

MVMA has no specific comments on this chapter. It is important to ensure that the *Act* is not a barrier to using or acquiring biotechnological solutions to address or assist with an environmental situation.

Chapter 8 - Controlling Pollution and Wastes

International Activities:

With respect to international air, water and waste activities, it is our opinion that any actions that Canada takes to advance the environmental protection in the international arena must be harmonized with efforts of other countries. MVMA believes that Canada should not pursue unilateral actions that will put Canada at a competitive disadvantage, especially with its major trading partner the U.S.A.

International Air Pollution:

With respect to recommendation 8.1, we strongly believe that the federal government should coordinate international air pollution issues with the provinces. However, the responsibility for implementation of these issues should lie with the provinces to avoid overlap and duplication.

MVMA is concerned with respect to the provision in recommendation 8.1 regarding the Government seeking authority for the Minister of Environment to take corrective action without undue delay where there is an emergency situation. We believe that it is inappropriate to consider including this provision until it is clear what is meant by an "emergency situation". MVMA for example would not consider the circumstances under which the recent interim order banning PCB exports to the United States was issued to be an emergency.

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Fuels:

National Standards for Fuels:

8.2 Incorporate Authority to Make Regulations Setting National Standards for Fuels

The MVMA supports the federal government's leadership in regulating fuels. We believe that this is an important and positive step in ensuring that consumers have the appropriate fuels to support the vehicle emissions control equipment and will result in cleaner air.

It is the MVMA's strongly held view that motor vehicle emission standards, must be harmonized with the majority of the US Federal market. Unless appropriate fuel formulations are in place to support the advanced emission control technologies, Canadians will not receive the full environmental benefits. In Canada, regulatory instruments governing fuel formulations and additive specifications, similar to those employed by the U.S. Environmental Protection Agency, must be adopted to ensure that the advanced emission control systems perform as designed, for the useful life of the vehicle.

If Canadian General Standards Board fuel specifications are incorporated by reference in any Canadian National fuel standard, the CGSB standards should be amended in a timely manner to accommodate these and other recommendations. Provinces that do not currently adopt CGSB National fuel standards should be encouraged to do so. Alternatively, all fuel retailed should be required to meet CGSB fuel standards in addition to the proposed gasoline National Environmental Requirements.

8.3 Regulations to Specify a Range of Characteristics

It must be recognized that fuel composition will become increasingly important for in-use emissions compliance requirements if they are introduced in 1998. We believe that the recommendation in the government response should be strengthened. In providing recommendations with respect to fuels specifications the CCME should reference maximums as opposed to averages. California legislation provides some options in achieving lower sulphur levels - two of which are; 40 ppm on a per gallon basis, or 80 ppm maximum with an annual average of 30 ppm. Without control of the maximum levels of fuel constituents, today's advanced emission control hardware will not perform at its optimum level. Additionally, with only control of the average of fuel constituents, potentially fifty percent of consumers vehicles will be exposed to fuel formulations above the average which will make compliance with OBD-II requirements and in-use emission inspection programs problematic. As you are aware emission regulations require each vehicle to comply with their requirements, controlling only the average of fuel constituents makes this task almost impossible.

Throughout the evolutionary process of emissions control development, engineers have operated within the constraints of improving fuel efficiency and continuously increasing customer satisfaction requirements. Throughout this development period, vehicles had to be able to operate satisfactorily and maintain control of emissions throughout their useful life with whatever gasoline the customer chose to use. Properties of commercial gasolines vary widely in Canada today and the fuel's volatility, composition and deposit-forming tendency can affect customer satisfaction and emission control.

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As the opportunity for further reduction diminishes, the need for cleaner gasolines becomes more important. The calibration window, needed to accommodate wide ranges in fuel properties, is shrinking. The vehicle and the fuel must be considered as a system in meeting emissions targets that are fast approaching zero.

Impact of Rules on Pollution Control Equipment:**8.4 Compatibility Between Fuels and the Equipment**

The vehicle can no longer bear the full burden of emissions reduction. California in the development of California Phase II Reformulated Gasoline has recognized the need for a partnered approach focusing on supporting fuels to provide the full emissions reduction benefit from emissions hardware. To get the full benefit that the California low emissions technology was designed to provide, requires California specification fuel. In this respect the MVMA has concerns about several gasoline characteristics and constituents; manganese based fuel additives (MMT), sulphur and deposit control additives. The MVMA supports the Government intent to amend the wording of a renewed CEPA to provide authority to deal with the negative impact that certain fuel characteristics or constituents may have on pollution control equipment.

If Canadians are unable to purchase unleaded gasoline that is free of manganese based additives, they will be paying for improved low emissions control technology without receiving the desired environmental benefits. Much of the focus today is on the deleterious effects of one manganese based additive, MMT (methylcyclopentadienyl manganese tricarbonyl), on the OBD-II (second generation on-board diagnostic) systems. Additional concerns include catalyst deterioration and plugging, delayed emission control response, fuel control, spark plug fouling and engine deposits. Without the availability of manganese-free gasoline in Canada, Canadians will not benefit from fully functioning OBD-II systems on automobiles equivalent to those sold in the majority of the U.S.

The automobile manufacturers currently supply extended warranty coverage on selected emission components such as catalytic converters and On Board Diagnostic (OBD II) systems. It is unrealistic to expect manufacturers to continue these extended warranties in the face of the deleterious effects of manganese based additives (MMT). Therefore it is extremely important that fuel specifications include a requirement for manganese free gasoline and lower sulphur levels.

Penalizing Canadian new car buyers by forcing them to pay a cost premium for future low emission vehicle (LEV) technology without having in place supporting fuels misses a major opportunity. The entire reduction benefit from future LEV technology (1.3% further HC reduction, 5% further NO_x reduction), is achieved only if California Phase II gasoline is available.

We find the reference to levels of sulphur in Canadian gasoline of 1000 ppm entirely unacceptable. A level of 1000 ppm sulphur in gasoline suppresses catalyst activity. Significantly lower levels are necessary to maintain acceptable catalyst activity and reduce emissions. Sulphur concentrations in Canadian gasolines could be high enough to suppress operation of the vehicle's catalytic converter, to the point that the tailpipe emissions on OBD-II equipped vehicles could trigger a dashboard warning light.

The gasoline requirements should also address control of port fuel injector (PFI), intake valve (IVD) and combustion chamber deposits (CCD). The current Canadian General Standards Board specification for deposit control additives includes IVD control using the industry approved

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BMW test (ASTM D 5500). The CGSB specification assumes an effective IVD additive will provide adequate carburetor and PFI cleanliness, so the IVD test is the only deposit control test specified. While this IVD specification is acceptable, CCD control is also necessary.

CCD's can adversely affect emissions and increase octane requirements. Presently, however, there is no standard industry test for the CCD forming tendency of gasoline as there is for IVD and PFI deposits. Until a standard CCD test is developed, we recommend a maximum limit of 70 mg/ml on the unwashed gum content of the gasoline as an indirect method to control CCD. Limiting the unwashed gum level of gasoline will help to ensure that possible over addition of other additives will not lead to CCD formation.

8.5 Combustion of the Fuel

The MVMA is supportive of the Government intent to remove the phrase "on the combustion of the fuel in ordinary circumstances" thereby allowing the development of regulations for fuels and their ingredients to address evaporative emissions from stored or transported fuels, or during the fueling of vehicles or other equipment. Significant air quality gains are achievable by controlling these sources.

Motor Vehicle Emissions:

8.7 Transfer of Legislative Authority for Emissions

With regard to the transfer of legislative authority for vehicle emissions to CEPA, the MVMA does not support this recommendation as written. Emission control, fuel efficiency and safety regulations are very interactive and a careful balance must be established in order to achieve the best overall standards, at the lowest cost, for the Canadian consumer and the environment. The expertise that Transport Canada has established in the area of emissions systems should not be ignored at a time when rapid and critical changes are occurring in emissions technology, fuels and legislation.

Vehicle design involves compromise in the areas of emission control, fuel efficiency and safety. Any regulatory body must remain cognizant of this problem so that an effective and economical balance is achieved. This may be more difficult to achieve if emissions and fuel specifications are separated from safety by transferring authority for emissions from Transport Canada to Environment Canada. It is however essential that fuel specification controls be in place that are compatible with the emission control hardware, a total systems approach, which requires coordination in the setting of fuels and emissions systems specifications. It is our opinion that the control of emissions should remain with Transport Canada, where the knowledge and expertise on emissions hardware and safety issues reside; with Transport Canada receiving the required policy input from Environment Canada.

International Water Pollution:

With respect to recommendation 8.9, MVMA believes that the principal obligation of the federal government should be to coordinate international water pollution issues with the provinces. However, the responsibility for implementation of these issues should lie with the provinces to avoid overlap and duplication.

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Nutrients:

MVMA disagrees with the recommendation 8.10 with respect to new definition for "nutrient". We are uncertain whether the proposed definition is consistent with that of the provinces and that of the international community. Clarification and justification is required consideration is given to including this in the renewed *Act*.

Reduction of Hazardous Wastes and Non-hazardous waste:

MVMA strongly disagrees with the recommendations outlined in this section as they run counter to the principle of intergovernmental cooperation and intrude into the provincial jurisdiction. Many of the recommendations appear to overlap and duplicate already existing provincial requirements. We believe that the recommendations contradict the principle of cooperative partnerships with the provinces in environmental protection. The waste area is already highly regulated and it is difficult to see how additional requirements could possibly result in improved environmental quality.

"Waste Definition"

We believe that the federal government should limit itself to the regulation of hazardous waste for the purpose of export and transboundary movement. The federal government could assist with ensuring that the international definitions of hazardous waste are consistent with provincial jurisdictions. As this is a highly regulated area by different levels of government a **single clear definition is required**. It is important to ensure that the hazardous waste definition used in the renewed *CEPA* is consistent with provincial, OECD and other international definitions and that it does not serve as a barrier to moving up the hazardous waste management hierarchy to the extent practical.

Responsibility of Users and Producers:

MVMA believes that clarification is required on what is meant by the responsibilities of users and producers. In principle, we believe that the generator should be responsible for proper disposal of their own waste. It is premature and inappropriate to include this provision in *CEPA*. Particularly since we are uncertain of this approach has been adopted by other countries. With respect to product stewardship, MVMA believes that is inappropriate to legislate product stewardship in *CEPA* especially since this would be an intrusion into the marketplace and would discourage companies or sectors from taking on proactive initiatives.

Hazardous Wastes - New Requirement - Reduce/Phase-Out the Quantity of Hazardous Waste Being Exported for Disposal

MVMA strongly disagrees with recommendation 8.15 with respect to the requirement for exporters to have plans for reducing/phasing out waste for the sole purpose of final disposal. This recommendation implies that exporters of waste are not managing their wastes as responsibly as those who do not export and would create a barrier to free-market access to facilities that can best handle the particular waste. In many cases, the reason for export is the absence of cost-effective alternatives or technologies in Canada.

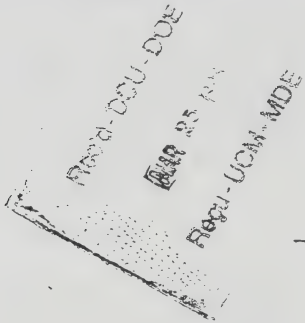
MVMA Submission On "CEPA REVIEW: THE GOVERNMENT RESPONSE"

Chapter 10 - Government Operations, Federal Lands and Aboriginal Lands

MVMA believes that the federal government should lead by example. MVMA has no specific comments on this chapter. We do believe that government operations should be required to meet the same standards that are applied to business. We believe that this experience will lead to a better understanding of the issues and problems faced by industry.

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: _____

Maree Naylor

(NAYLOR)

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Rec'd-DCU-DOE

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Rec'd-UCM-MDE

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March 14, 1996

Dear Mr. Marchi,

Our group is very concerned that the new government proposals for biotechnology regulation in the CEPA are not adequate and in fact lessen the control which is there at present. We are about to move into a new era of biotechnology which has truly frightening possibilities even greater than those of the era of chemical pollution which we are just now trying to pull ourselves out of. Biotechnology is untried, in many instances, outside of the laboratory and experimentation will be accomplished in the environment we share with the new life forms created by biotechnology. Personally I prefer not to. A minimum protection which I demand from our government is public notice of what is happening in this field in such a way that effective consultation can take place.

Canada needs an Environmental Bill of Rights. This would be one way in which the federal government can take a leadership role in ensuring a healthy environment for our children. It could also be a way to take a leadership role in the world at large. In these days of cutbacks and retrenchment it is time to reverse the backward looking policies of the nineties and approach the year 2000 with a little courage and common sense. Biotechnology is certainly the technology of the next century. It's time we got a grip on it before we lose our grip all together and allow the corporations to make these life decisions for us.

Yours sincerely

Carolyn Linden

Carolyn Linden
co chair NEC

DEAR HONOURABLE DAVE DINGWALL

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Lorne O'Neil

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Bradford

ON

CEPA

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

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DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

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March 22, 1996

Minister Ron Irwin
Indian Affairs and Northern Development
Les Terrasses de la Chaudiere
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Minister Sergio Marchi
Minister of Environment
10 Wellington Street, 28th Floor
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K1A 0H3 VIA FAX: (819) 953-3457

Dear Ministers:

Re: Environmental Protection Legislation Designed for the Future - A renewed CEPA

I wish to provide you with NAN's response to your Government's December 1995 proposal, as it relates to NAN lands, territories and resources. I will be sending a copy to the CEPA office as well, but, as the proposal raises government-to-government issues, I am responding directly to you as Ministers with responsibility in relation to this matter. The issues which NAN raises are issues that need to be addressed on a political level, and I expect that before your Government makes decisions with respect to these important issues, we will meet to discuss the matters we have raised herein.

We have had an opportunity to review your Government's response to the CEPA review undertaken in June, 1995. The response raises many important environmental issues relating to our people. We wish to discuss key concerns as they touch upon our aboriginal lands.

Need for provision regarding Federal Clean-up Responsibility for Existing Environmental Hazards on Aboriginal Lands

First, as you will be aware, and as DIAND's presentation to the Standing Committee touched upon, there are many environmental problems on reserves, including NAN reserves; leaking underground storage tanks polluting water supply and soils is but one example. It is NAN's view that Canada should be addressing this in a much more direct

way in the CEPA amendments. Canada's suggested approach is to put in place regulations for aboriginal lands to cover the "regulatory gap", but it does not address past damages.

What is missing from your proposal in Chapter 10 regarding putting the "federal house" in order is a statutory provision placing full financial responsibility on Canada, in its fiduciary capacity, for clean-up of past spills and other environmental hazards on reserves. We do not believe that responsibility should be directly exercised by Canada, but rather, First Nations, perhaps as part of the suggested training on environmental protection mentioned in s. 10.12 (p. 81), a proposal which we welcome, should oversee and carry out the clean-up to mutually acceptable standards.

We note that, as our Governments work slowly in the area of self-government negotiations, these past damages will more and more come to the foreground. Our people will not accept having to take financial responsibility to clean-up hazards that, through either omission or commission, are Canada's responsibility. Canada, in its fiduciary capacity, has indeed been responsible for a regulatory gap on reserves in the past which is at least partially responsible for the environmental problems we face today. As noted in the Standing Committee's report, the *Indian Act* has not permitted the creation of an acceptable environmental protection regime on reserves by our First Nation Councils. Hand in hand with the limitations placed on our First Nations by the *Indian Act* is the fact that Canada has never provided funding to First Nations to permit them to exercise an appropriate degree of environmental control on reserves. The proper way to remedy that is not to pass financial responsibility for clean-up to First Nations, along with powers of self-government, but rather to place that financial responsibility squarely where it belongs: with the Canadian government.

We do not think it is in either Canada's or the first Nations' interests to have to battle in court to force clean-up for past environmental damages on reserves. Nor should a specific claims process drag on far into the future to deal with these issues. The longer we wait, the worse these problems become. We submit, therefore, that CEPA should address this issues directly.

Response to suggestion for a Non-Derogation Clause

Canada has suggested that it will consider a non-derogation clause because of concerns expressed about the effect of the proposed changes on s. 35 Constitutional rights. It is NAN's view that the institution of a Canadian environmental regulatory regime for our reserves under a "renewed CEPA" in the absence of self-government agreements (which Canada sees as necessary before we can begin to exercise self-government), will inevitably affect our s. 35 rights to be self-governing. It would be misleading to believe that a non-derogation clause will somehow take away that inevitable effect. The regime that Canada has proposed for the newly defined "aboriginal lands" will, without question, derogate from our right to be self-governing.

Environmental Protection Legislation Designed for the Future - A Renewed CEPA
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Canada has proposed that, after First Nations have self-government agreements with Canada and after we have passed our own aboriginal environmental protection laws, and after we have then negotiated equivalency agreements so that CEPA regulations would not apply any longer, only then can we clearly implement our own laws without fear of challenges by Canada to our jurisdiction. Then, we can be "self-governing". With respect, this is not self-government but, particularly because of the equivalency agreement provisions, amounts to requiring us to adopt a legal system very much like Canada's. Therefore, our s. 35 rights will, inevitable, be derogated from by your proposal.

In short, a non-derogation clause would be at odds with Canada's entire proposal. We believe that the appropriate response is to adopt the proposal we discuss below.

Interim application of new CEPA regulations for aboriginal lands prior to self-government agreements

We understand the desire on the part of Canada to put in place an environmental protection regime on reserve, in view of the fact that there is a serious regulatory gap for environmental protection on reserves. However, what it would mean, in effect, is that it will be many years before anything approaching self-government with respect to environmental protection, even only for NAN First Nation reserves, will be in place. This is especially so given the provisions dealing with equivalency agreements.

We have an alternative proposal. Minister Irwin will be very aware that negotiations with NAN regarding the MOU, begun in 1986, are not moving quickly. Canada has chosen, despite NAN's protests, to refuse to continue negotiating the MOU until it receives the report of the Special Chiefs' Task Force set up under NAN Chiefs' Resolution 95/80. I do not wish, here, to discuss this issue in detail, but I use it to illustrate the point that our negotiations are proceeding slowly. One of the critical issues which we wish to negotiate is environmental protection on reserve (as well, of course, as off reserve). There have been no decisions made, though several models have been put forward, regarding how our jurisdiction will be exercised in relation to environmental protection on reserve. But this is a critical issue for our people.

If, however, you proceed with your proposal, and a renewed CEPA is used to set up a comprehensive environmental protection regime on reserve, Canada will be making it much more difficult for self-government negotiations on environmental protection to proceed, because we will have to deal with a whole established regulatory regime on reserve. It is, as you well know, much more complex to negotiate self-government arrangements if a regulatory regime has already been established, and institutions established and people employed whose job it is to implement that regime. Recognizing the importance to all people, both on- and off-reserve, both aboriginal and non-aboriginal, of putting in place a good environmental protection regime on reserve, and recognizing that self-government negotiations take a very long time, we propose the following:

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Instead of having to "undo" the application of CEPA on reserve in the context of self-government negotiations, Canada and NAN should agree to fast-track negotiations for environmental protection on reserve as the first step in an accelerated MOU process.

It is self-evident that Canada's proposal to pass CEPA regulations on-reserve will take a lengthy period of time. It would of course require careful and timely consultation with First Nations. Rather than Canada and NAN First Nations spending their time carrying out this interim task, we submit it would be much more efficient and lead more quickly to the establishment of capacity to exercise our right to be self-governing, to fast-track self-government negotiations in the way we have suggested.

NAN is extremely concerned about environmental protection on reserve. Canada with this proposal is now beginning to take steps to address this concern, but NAN submits that Canada's proposal will mean much more protracted and costly negotiations and discussions. Instead, it is our view that the better approach would be to address the issues in direct negotiations beginning as soon as possible.

I would appreciate the opportunity to discuss this with you as soon as possible.

Yours truly,

NISHNAWBE-ASKI NATION



Grand Chief Charles D. Fox

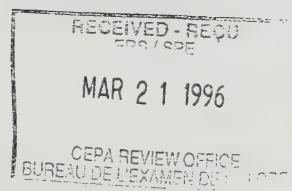
cc: CEPA Office, Environment Canada
Fax - (819) 997-0449

COMMENTS ON THE
GOVERNMENT RESPONSE TO THE
RECOMMENDATIONS OF THE
STANDING COMMITTEE ON
ENVIRONMENT AND
SUSTAINABLE DEVELOPMENT.

DATE: March 20, 1996

P.O. Box 490
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**THE ADAMS MINE PROPOSAL
CONSISTENCY OF IN-ONTARIO DISPOSAL OF METRO
TORONTO'S MUNICIPAL SOLID WASTE WITH
PROPOSED CHANGES TO THE
CANADIAN ENVIRONMENTAL PROTECTION ACT**

**COMMENTS ON THE GOVERNMENT RESPONSE TO THE
RECOMMENDATIONS OF THE STANDING COMMITTEE
ON ENVIRONMENT AND SUSTAINABLE DEVELOPMENT
*(As Outlined In Its Fifth Report)***

-and-

**THE CONSISTENCY OF AN "IN-ONTARIO SOLUTION", THE
ADAMS MINE PROPOSAL FOR THE DISPOSAL OF METRO
TORONTO'S MUNICIPAL SOLID WASTE, WITH PROPOSED
CHANGES TO THE CANADIAN ENVIRONMENTAL
PROTECTION ACT (CEPA)**

**Prepared by:
THE NORTHEASTERN
ONTARIO MUNICIPALITIES
ACTION GROUP (MAG)**

March 1996

**THE CONSISTENCY OF THE ADAMS MINE SOLUTION TO METRO
TORONTO'S MUNICIPAL SOLID WASTE PROBLEM WITH
PROPOSED CHANGES TO CEPA**

**BRIEF SUBMITTED BY THE NORTHEASTERN ONTARIO
MUNICIPALITIES ACTION GROUP**

EXECUTIVE SUMMARY

The Northeastern Ontario Municipalities Action Group is commenting on the Federal Government's response to the recommendations of the Standing Committee on Environment and Sustainable Development because:

- the proposed changes to the *Canadian Environmental Protection Act* (CEPA) will directly affect the livelihood of the citizens it represents;
- receipt of comments from the Federal Government's municipal partners is consistent with the Federal Government's acknowledgement of the need for harmonization of government policy and actions;
- cuts to upper tier government allocation of funds to municipalities have left Northeastern Ontario municipalities in a fiscal crisis;
- the Action Group's mandate requires it to actively support initiatives that protect and enhance the lives of its citizens. The rail haul of non-hazardous waste to the abandoned Adams Mine near Kirkland Lake, Ontario is one such initiative - and the proposed changes to CEPA will have an impact on it.

The Action Group represents approximately forty (40) communities along the Highway 11 corridor of Northeastern Ontario between North Bay and Hearst, with a total population of over 250,000 people and an area of approximately 130,000 sq. km. Part of its mandate is to ensure environmental protection of the vast area that it represents, while promoting sound economic development.

The Action Group supports the proposed changes to CEPA. It believes that the international commitments reflected in the proposed revisions cannot be ignored at the provincial, regional, and municipal levels of environmental and economic decision-making. To do so would render the Federal policies meaningless.

A specific case in point is Metro Toronto's upcoming decision on whether to export its approximately 2 million tonnes/year of municipal solid waste to the United States or to ship it by rail to Northeastern Ontario for disposal in the abandoned Adams Mine. To export Ontario-based problems to the U.S. is not environmentally or economically preferable, nor is it appropriate behaviour for a country that purports to be a world leader in terms of placing priority on protection of the environment, and the implementation of the principle of sustainable development.

It is incumbent on the Federal Government to ensure that the "in-Ontario" solution to Metro Toronto's municipal solid waste problem - the Adams Mine proposal - is given full and fair consideration before any decision is made to export the waste to the U.S. The Action Group is committed to meeting with Provincial Government to ensure that the benefits to Ontario are fully and fairly considered. We now call upon the Federal Government to take an active interest in this project. We urge the Federal Government to focus on the following:

1. The positive results of the site assessment analyses of the Adams Mine site to date;
2. The need for a comparison of environmental and economic benefits to Ontario of the Adams Mine proposal with U.S. proposals before any decision is made to export Metro Toronto's municipal solid waste to the U.S.;
3. The need for harmonization between federal, provincial, and local levels of government in matters pertaining to environmental and economic policy, and the principle of sustainable development;
4. The consistency of the Adams Mine proposal with provincial policy encouraging private/public sector collaboration; and
5. The fact that a decision to export Metro Toronto's municipal solid waste to the U.S. When an "in-Ontario" solution exists indicates a lack of direction, the potential to circumvent the *Ontario Environmental Assessment Act*, and an inconsistency with federal environmental legislation and policies.

**THE CONSISTENCY OF THE ADAMS MINE SOLUTION TO METRO
TORONTO'S MUNICIPAL SOLID WASTE PROBLEM WITH
PROPOSED CHANGES TO CEPA**

**SUBMITTED BY
THE NORTHEASTERN ONTARIO MUNICIPALITIES ACTION GROUP**

INTRODUCTION

The purpose of this document is to provide the federal government with the Northeastern Ontario Municipalities Action Group's comments on the proposed changes to the *Canadian Environmental Protection Act* (CEPA). It is appropriate for the Northeastern Ontario Municipalities Action Group (the "Action Group") to comment on the proposed changes for the following reasons:

1. **The Municipalities Action Group** represents approximately forty (40) communities along the Highway 11 corridor of Northeastern Ontario between North Bay and Hearst, with a total population of over 250,000 people. (Appendix 1 provides a list of these communities) The two main priorities of the group are to **sustain the transportation system** linking northeastern Ontario to southern Ontario and to **promote economic development** along the Highway 11 North corridor.

2. **Changes to CEPA will affect the livelihood of northeastern Ontario citizens directly.** The area that the Action Group represents relies heavily on the extraction of renewable and nonrenewable resources. The Action Group is all too aware of the need for "sustainable development", "ecosystem approaches" to protection of the environment, and the need for elimination of toxic substances from the biosphere as contained in the "CEPA Revisited" document.

3. **The provision of comments from lower tier levels of government is consistent with the recognition of the need for “harmonization” of all levels of governments.** Municipal governments engage in activities that should be consistent with federal policies as that is the level of Government closest to the people they serve and represent. Therefore, it is appropriate that the Action Group, which represents local levels of governments covering approximately 130,000 sq. kms of Ontario, participate in the CEPA review process.
4. **The need to maintain an appropriate level of services and deal with cuts to transfer payments from federal and provincial governments has left northeastern Ontario municipalities in a fiscal crisis.** Historically, benefits from the extraction of natural resources in northeastern Ontario have been exported to southern Ontario and the United States. Northeastern Ontario has born the costs - environmental degradation, disproportionately low income levels, and disproportionately high unemployment. These costs impact directly on the providers of social services - i.e. the municipal government. The Action Group has a mandate to ensure that this legacy does not continue.
5. **The Action Group is committed to actively supporting initiatives that will protect and enhance the lives of its citizens. The use of the Adams Mine for disposing of Metro Toronto’s municipal solid waste is one such initiative.** Metro Toronto's decision is directly relevant to the proposed changes to CEPA. It is incumbent on the Action Group to ensure that the federal government is aware that Metro Toronto’s consideration of U.S. landfills for its municipal solid waste, instead of an “in-Ontario” solution is contrary to the proposed changes to CEPA.

6. The Action Group supports the changes proposed in the "CEPA Revisited" document, particularly those that propose the phasing out of export of hazardous wastes and greater control over the cross-border movement of solid non-hazardous wastes. The Action Group is motivated to provide these comments because of the prospect of losing a significant economic opportunity to the United States, in spite of the fact that an Ontario solution is environmentally preferable. There is more security in disposing of these wastes in Ontario, rather than exporting them. The Action Group believes this is an example of the need to "think globally and act locally", as espoused by the authors of the "CEPA Revisited document". It calls upon the federal government to move quickly to incorporate the changes described in the proposal, and to ensure that decisions are not made that are contradictory to these revised policies.

The issue is the opportunity for the Municipality of Metro Toronto to rail haul its residual municipal solid waste to an abandoned open pit iron ore mine north of Kirkland Lake, Ontario, for disposal in the excavated pits. This opportunity has been before it since 1990. The following provides a brief summary of the state of affairs.

1. In December, 1995, Metro Toronto councillors, against the recommendations of staff, decided that Metro would not complete its environmental assessment of the use of the Adams Mine for the disposal of its municipal solid waste. Instead, it is pursuing private sector proposals. Metro will make a choice between four (4) private sector proposals it "short-listed" after issuing a "Request for Proposal" in the fall of 1995. Three of the four proposals are disposal sites in the United States. One is an "in-Ontario" system.

2. Although there are four short listed proposals being evaluated, Metro council's decision is essentially one of two options:

It could decide to pursue a cost-effective system of rail haul and "state of the art" disposal at the Adams Mine in Ontario, as proposed by a consortium called Rail*Cycle*North. This proposal also includes options for public/private sector arrangements;

-OR-

It could abandon the only "In-Ontario" solution in favour of one of three USA disposal options.

3. Only one Ontario solution has been "short-listed" by Metro for evaluation - the Rail*Cycle*North submission. The Rail*Cycle*North consortium comprises CN Rail, the Ontario Northland Transportation Commission (ONTC), Browning-Ferris Industries and Notre Development (a North Bay, Ontario - based company that purchased the Adams Mine from Dofasco in 1990). All others are U.S. sites.

Thus, Metro Toronto is faced with a complicated, fiscally significant, and time-driven set of decisions - what they decide will impact Toronto's citizens, the citizens of Ontario, and the environment of Ontario for a minimum of twenty (20) years.

The Action Group believes that a decision as significant for the environment and the Ontario economy as this one is, must be consistent with the federal government's proposed changes to CEPA. It must also provide the most secure option possible for the disposal of Metro's waste. In the past Metro has produced about 2 million tonnes/annum residual (post 3Rs) solid waste. It is hoping to reduce those volumes substantially through aggressive 3Rs initiatives currently being contemplated.

The movement and disposal of this volume of waste over twenty (20) years has significant environmental and economic implications for the entire province, and specifically for Northeastern Ontario. The Action Group demands that such a decision be made only after a detailed environmental and economic assessment evaluation of the benefits to the entire province have been calculated.

The brief is divided into three (3) parts. **First**, the constitution and mandate of the Northeastern Ontario Municipalities Action Group is described. **Second**, the benefits of the undertaking to the economy of northern Ontario are provided, conditional upon the completion of the environmental assessment. (Results of site assessment studies completed to date are very positive, as demonstrated by the "Overview Document" attached to this brief, and referred to in the text.) **Third**, compelling reasons are provided as to why the Adams Mine project is consistent with the proposed changes to CEPA, and why the U.S. alternatives are not.

A. THE ROLE OF THE NORTHEASTERN ONTARIO MUNICIPALITIES ACTION GROUP

The Northeastern Ontario Municipalities Action Group ("the Action Group") represents approximately forty (40) communities along the Highway 11 corridor of Northeastern Ontario between North Bay and Hearst, with a total population of over 250,000 people. (see Appendix 1) The Action Group was formed to:

- 1. protect and improve the transportation system that links northeastern Ontario to southern Ontario; and**
- 2. collectively promote the economic development of the member municipalities along the "Highway 11 North" corridor.**

Past successes of the Action Group are testimony to the combined strength of the member communities. Their collaboration on issues that affect Northeastern Ontario has demonstrated to the rest of the province and Canada that communities in Northeastern Ontario are determined to ensure the economic and environmental well-being of the citizens and the part of Ontario that they represent. An example is the persuasive case that the Action Group presented to the Federal Environmental Assessment Review Panel that heard submissions on the runway expansion issue and the possible changes in airline service to the northern "spoke" communities. The Action Group continues to provide aggressive, creative and environmentally responsible approaches to economic development in Northeastern Ontario. Other areas within its sphere of concern, and in which it has been active are:

- **transfer of small airports from federal jurisdiction to municipalities;**
- **gun control;**
- **cellular telephone service to corridor municipalities;**
- **highway signage issues;**
- **air transportation within the Northeastern Ontario region;**
- **continued access to Toronto Pearson Airport hub;**
- **mining incentives;**
- **rail transportation in northern Ontario;**
- **passenger transportation (air, bus and rail) in northern Ontario;**
- **gasoline prices in northern Ontario;**
- **passing lanes and four laning along Highway 11;**
- **tourism in northern Ontario;**
- **waste management as an industry;**
- **job creation and job retention in the corridor municipalities;**

B. ROLE OF THE NORTHEASTERN ONTARIO MUNICIPALITIES ACTION GROUP IN THE ADAMS MINE PROJECT

The Action Group has been supportive of the need for an environmental assessment of the Adams Mine proposal since its inception in 1990. It was consistent and relentless in its lobbying of upper tier government levels for the commencement of the environmental assessment, and all the requisite supporting technical analyses. The Action Group continued its lobby efforts through three provincial governments. The results of the site assessment studies to date have demonstrated that the site is safe from an environmental perspective and that rail haul and landfilling operations will comply with all environmental regulations, standards, and guidelines, as well as the most stringent industrial safety and operational standards. The Action Group supports the completion of the final technical studies of the mine site to confirm these conclusions, and to refine the design of the proposed landfill.

The Action Group supports Brenda Elliott's, the Minister of the Environment and Energy, statements in November, 1995 that:

"Decisions should be governed by modern, sound economic and environmental considerations and the best scientific and technical information. And the technology must be the most advanced available and subject to strong standards, extensive monitoring and rigid enforcement."

The draft "Overview Document" of Metro Toronto's Adams Mine Site Assessment Project, attached here as Appendix 2, is proof that the Adams Mine project will be a model of this kind of operation. It is consistent with the requirements of the proposed revisions to CEPA and with Ontario's environmental policies.

C. THE BENEFITS OF THE ADAMS MINE PROJECT ARE NEEDED IN NORTHEASTERN ONTARIO

Significant economic benefits will accrue to northeastern Ontario under the terms of a package to be negotiated between Notre Development Corporation (the owner of the Adams Mine) and the three (3) municipalities closest to the mine site, and through direct job creation. These are briefly reviewed below with a description of other benefits available.

1. Benefits to the Municipalities Closest to the Site

The towns of Kirkland Lake, Englehart and Larder Lake would be provided with significant economic benefits, and other benefits. Notre Development is committed to establishing a mutually beneficial regional benefits package. Components being contemplated are:

- o royalties calculated on a \$/tonne of landfilled waste;
- o a Research and Development fund to be administered by Northern College and the three municipalities;
- o provision of 100 acres for an industrial park at the site;
- o local hiring.

2. Other Economic and Environmental Benefits to the Region

Other benefits, not specified in the terms of the agreements with the host municipalities, but equally tangible, are as follows:

- o employment opportunities for on-site landfilling operations for approximately 110 persons. This figure is exclusive of labour requirements for: construction; scaling of pit walls; gas and/or leachate collection, and rock crushing. The majority of these workers will be hired locally. These employment opportunities will partially offset job losses in the area that have contributed to an out-migration of population. They may also affect the lower- than- average percentage of young people living in the area;
- o spin-off economic benefits due to operation of the landfill site. The current average income of local residents is well below the provincial average;
- o Twenty-two (22) jobs at the Ontario Northland Rail Division (ONR) of the Ontario Transportation Commission (ONTC), without consideration of requirements for planned maintenance of the rail car fleet, or the maintenance of the solid waste containers;
- o access to cost-free, "state of the art" landfilling at the Adams Mine site, in accordance with the most stringent Ontario regulations, standards and guidelines;
- o collection of household hazardous waste at the Adams Mine site;
- o conversion of the abandoned iron ore mine to productive use, and site remediation via the use of existing tailings;
- o stimulation of education and training opportunities for northern institutions, via proximity to the Adams Mine, and commitments to co-operative education opportunities;

- o The Adams Mine project will provide a much-needed injection of revenue into the ONR specifically , and the ONTC in general. This additional revenue could affect the viability of the railway portion of the system, and can only contribute in a positive manner to the vital passenger service that the ONTC provides, and which has been steadily eroded over the past five years.

Until recently the ONTC could not be proactive in its support of the Adams Mine Project. That situation has now changed. The Commission is now publicly endorsing the project, and the ONR is an active part of the Rail*Cycle*North consortium.

More significant than the new jobs created is the security that the Adams Mine landfilling activities will provide to the ONTC in terms of establishing itself as a regular freight customer. Recent cuts to ONTC budgets have placed the communications and transportation “lifeline to the north” in jeopardy. Cancellation of the airline component of the ONTC’s services, lay-offs and incentive packages for early retirement will result in losses in the order of hundreds of employees, impacting directly on Englehart and North Bay.

D. ENVIRONMENTAL AND ECONOMIC REASONS WHY METRO TORONTO AND THE PROVINCE OF ONTARIO SHOULD SELECT THE ADAMS MINE OVER A U.S.A. DESTINATION FOR ITS MUNICIPAL SOLID WASTE

This section identifies issues the Metro Toronto council must factor into its decision-making process about whether to select the proposal from Rail*Cycle*North for the only “in-Ontario solution, or make the selection of a U.S. destination for its municipal solid waste. These issues are relevant to the proposed changes to CEPA.

The Action Group believes the federal government has a duty to ensure that there is consistency between its policies, and the actions taken at the lower levels of government. The Action Group has provided this list of issues to demonstrate to those considering changes to CEPA the significance of Metro's decision not only to Metro Toronto and northeastern Ontario municipalities, but to all of Ontario, and to Canada.

Metro Toronto is in the process of reviewing the alternatives it "short-listed" in December of 1995. Metro may make a selection about whether to choose a "cross-border" U.S. destination by December, 1996. (Metro's decision-making process and schedule for making those decisions is less than clear. The Action Group believes this is all the more reason for the federal government to express its policies forcefully and actively.)

The Action Group takes the position that Metro Toronto should not allow its municipal solid waste to go to existing U.S. landfill sites.. To do so would be paramount to allowing U.S. interests to control the solid waste management industry in Ontario. Only if, after a full environmental and economic evaluation, one of the U.S. alternatives offers a clearly superior solution to Rail*Cycle*North's rail haul/mine disposal, can all parties will be satisfied that a fair decision has been made. To conduct such an evaluation requires discussion and input from all interested stakeholders, including the Province of Ontario. The Action Group now calls upon the federal level of government to monitor this process to ensure consistency with its policies, as articulated through the proposed changes to CEPA.

Section B provided compelling environmental and economic reasons why Metro Toronto should dispose of its municipal solid waste at the Adams Mine site near Kirkland Lake, Ontario. They are reiterated as the first and second points in the argument the Action Group makes below.

1. The results of the studies of the Adams Mine proposal completed to date, indicate that the proposal is environmentally acceptable.

We refer again to the Overview Document that is Appendix 2. The draft technical reports demonstrate:

- o that rail haul is safer, less expensive, and has less impact on the environment than truck haul, for Metro's waste;
- o that the site can be safely designed and operated as a landfill;
- o that the net effects on the environment are predicted to be low;
- o that there are significant net benefits to the local economy. These will be lost if the waste is exported to the U.S.;
- o that the environmental impacts on the surrounding environment are mitigable, and that residual impacts are minimal, and acceptable;
- o that the impacts on the site from landfilling operations will be monitored extensively to ensure that impacts that occur are comparable to predicted impacts (i.e. safe and acceptable).

These fundamental conclusions will not be different when the detailed site assessment studies are completed later in 1996. Therefore, there is no "environmental" reason that the Adams Mine proposal should be dropped from further consideration. In fact, the reverse is true. In particular, the significant advantages of the use of rail haul over truck haul, from an air emissions perspective, cannot be ignored. Both in terms of quantity and types of emissions released rail

haul is unequivocally preferred to truck haul. Economies of scale made possible by the assured capacity at the already-excavated pits of the mine site only increase this advantage, and reduce the cumulative impact of vehicle emissions over time on the earth's atmosphere.

2. **The Adams Mine Project will provide employment, revenue, and economic benefits to Northeastern Ontario. These will be lost if a private sector U.S. alternative is pursued.**

The approximately one hundred and ten (110) jobs at the mine site referred to earlier from the landfilling operations, and the twenty-two (22) railway jobs are jobs created in the province of Ontario, not just in northern Ontario "railway towns" of Englehart or North Bay. Similarly, the revenue to the three (3) municipalities closest to the mine site, the spin-off economic benefits, and the benefits accruing to the ONTC ultimately impact positively on the entire province. These are all reasons why Metro Toronto should select the "In-Ontario" solution to its municipal solid waste disposal search and not let the revenue go to the U.S. The Adams Mine landfill proposal at present is the single most important opportunity for the three northern municipalities closest to the mine site. It is also the foundation for the continuation of the solid waste management industry in the province.

As stated above, the Adams Mine should be abandoned only if another option is demonstrated to be clearly superior. The Action Group believes that any such demonstration must include an analysis of the economic benefits to Ontario, and to the region in which the treatment and/or disposal option is located, and demands that those results be compared against similar benefits offered by the Adams Mine project. The impact of the two billion dollars in total expenditures generated by the project must be assessed in terms of its impact on the entire province. This impact must be compared against losses if the waste goes to the United States.

3. An "In-Ontario Solution" to solving environmental issues is consistent with provincial and federal policy. U.S.A. solutions are not.

Domestic, in-province solutions to environmental problems are consistent with provincial policy statements and federal initiatives. For example, the Honourable Brenda Elliott, Ontario Minister of Environment and Energy said recently:

"we want to see a Made in Ontario solution working for all of Ontario".¹

And, in December of 1995 Sheila Copps, then Minister of the Environment signed an Interim Order under CEPA banning the export of PCB's to the United States for incineration. In a statement made in November 1995 to the Canadian Bar Association (Ontario) Environmental Section, the Deputy Prime Minister said:

"We are meeting our obligations under the Basel Convention to dispose of our own PCB's. The handling (of) PCB's should be done in Canada by Canadians. We have to take care of our own problems."²

The Action Group understands that this initiative is meeting with some resistance. Regardless, it is clearly indicative of the intentions of the federal government to back its proposed changes to CEPA with regulations that, at the least make the issue of reliance on foreign fates for wastes less than secure, and at the most make it contrary to federal legislation.

¹. Notes for Remarks to the Recycling Council of Ontario 16th Annual Conference by the Honourable Brenda Elliott. October 19, 1995. Toronto, Ontario.

² Honourable Sheila Copps. Notes for Addressing the Canadian Bar Association (Ontario) Environmental Section. November 16, 1995. Toronto, Ontario.

There already have been protests from U.S. communities who have only recently become aware that their communities are being billed as “willing hosts” for one to two million tonnes/annum of Canadian municipal solid waste. This is not reassuring in terms of providing evidence of a secure disposal option for Metro Toronto’s waste. In any event, it hardly seems appropriate that the federal government on the one hand takes steps to honour its international commitments by tightening its own regulations, and on the other tacitly supports the export of this quantity of waste.

E. FEDERAL POLICIES ARE CONSISTENT WITH IN-ONTARIO SOLUTIONS FOR WASTE DISPOSAL

The Action Group now turns to the specific changes to CEPA to demonstrate why the Adams Mine proposal is consistent with federal policies, and why the U.S. alternatives being considered by Metro are not consistent.

1. Section 8 of “CEPA Revisited” describes stronger initiatives to control the emission from motor vehicles.

The Action Group described earlier the differences in emissions of undesirable pollutants between rail and diesel trucks. We refer to the document entitled “Ontario Freight Movement Study” prepared for the Transportation and Climate Change Collaborative for specifics. Grams/ tonne - kilometre differences range from 5 to 10 times as much for truck versus rail for carbon dioxide, nitrous oxide, vitrous oxide, sulphur dioxide, carbon monoxide and particulate matter. Clearly rail haul must be preferred over truck haul, particularly given the route that trucks headed for the United States would take, from transfer stations in Metro Toronto down the overcrowded highways of the Golden Triangle and through areas where air quality is already a concern to Canadians.

2. **The Action Group supports the CEPA initiatives to control and ban exports and imports of non-hazardous solid wastes into or out of Canada as described in Section 8 of the document.**

Canada should not be reliant on other jurisdictions and foreign policies to solve its own waste management problems, particularly when environmentally preferable, cost-effective solutions exist within its own borders.

Metro Toronto would be flying in the face of provincial and federal environmental policy if it opted for an alternative outside Ontario for disposing of its municipal solid waste.

3. **Metro Toronto has an obligation to examine a public sector/ private sector partnership with Ontario-based companies, and then complete a full economic analysis.**

Metro has an obligation to the citizens and elected representatives of the three northern municipalities with whom it used to have agreements, and the surrounding communities, to give priority to the "In-Ontario" solution.

The people of Northeastern Ontario have been sensitized to the potential implementation of the Adams Mine project, or something similar to it, since 1990. All are anxiously awaiting the results of the environmental assessment - especially now that the preliminary results are so very positive.

The elected councils of the municipalities of Kirkland Lake, Englehart and Larder Lake supported Metro's attempts to give the Adams Mine proposal fair consideration through difficult and contrary political times. Now that the environmental assessment is showing such positive results it is fair that Metro should give it priority. As indicated above, if Metro decides to carry any private sector options forward a full and fair economic analysis must be completed.

This is particularly so given the fact that all prices received in response to Metro's Request For Proposal have a 15 % confidence rate. The Action Group believes that all proposals received must surely be within a 15% range of each other. Therefore, a decision cannot be made on price alone. Rail*Cycle*North is working to refine its price, as are the U.S.A. companies with their alternative proposals. This reinforces the requirement that Metro make its decision with the most complete data. A decision cannot be made based only on the content of the responses to the Request for Proposals, submitted in December of 1995.

4. The use of an already existing U.S. site because the approvals process is easier is not environmentally responsible.

The Action Group has read the newspaper articles that quote Metro staff statements that sites in the U.S. are being considered by Metro because regulatory approvals are easier and less costly to obtain. We interpret such a position to mean that, because a privately-owned, U.S. landfill is already operating, it will be a relatively straightforward matter to send Metro's 2 million tonnes/annum there.

The Action Group sympathizes with Metro Toronto about the cost and uncertainty of entering into an environmental assessment in Ontario in accordance with the *Ontario Environmental Assessment Act* (EAA). However, circumventing the process by opting for an already existing U.S. site, is not an appropriate solution. In addition to the abdication of environmental responsibility demonstrated by exporting an Ontario problem, particularly given the volumes of waste in question, attention must be paid to the increased risk due to truck traffic, and the lost economic opportunities for Ontario.

The current Ontario government has committed to changing the EAA. Those changes are to be announced soon. It has committed to providing more certainty for proponents who comply with the process, and to streamlining schedules and review processes. The Action Group believes that the current Ontario government will render the EAA workable, while maintaining its high level of commitment to protection of the environment. It would be irresponsible and unseemly for a municipality the size of Metro to not appear to have the same level of trust in the provincial government.

5. The Adams Mine proposal provides Metro Toronto and other municipalities in Ontario control over fiscal expenditures and opportunities for future revenue generation.

The Action Group knows, from its own waste management operations, that municipal solid waste can provide revenue. The potential for the Adams Mine project to generate revenue in the future is also very real, not only from waste disposal fees, but from spin-off benefits such as methane gas sales. Maintaining options to alter its owner/operator arrangements in the future, as provided by Rail*Cycle*North gives it manoeuvring room to adjust to future economic climates.

In a similar vein, if authority for waste management is taken over by a larger regional body, a residue disposal site over which Metro has some control, and one that has a large capacity, places Metro in a favourable strategic position.

6. Public perception of Metro Toronto's decision-making abilities.

The Action Group feels it is appropriate to broach this subject, given the significance of the matter at hand. The idea that Metro's municipal solid waste could be hauled by rail to the abandoned mine site near Kirkland Lake has been talked about by Metro councillors, and known to its taxpayers for five (5) years. It was used as an

indication of why the Interim Waste Authority was an unfair interpretation of the EAA. The bulk of the technical analyses testing the site for its environmental acceptability are almost completed, at a cost to Metro taxpayers in excess of \$4.2 million. Total costs were over \$7 million. Given the positive results of the studies, Metro councillors must ensure that the public interest is protected by taking the necessary time to evaluate the Adams Mine further. To do less would seem to be rushing a decision and to be opening the door for U.S. companies to exploit a major environmental and economic opportunity that should be kept in Ontario, so that the people of Ontario can reap the benefits.

CONCLUSIONS

In closing, the **Northeastern Ontario Municipalities Action Group** reiterates its submissions about the need for the federal government to ensure that the initiatives it is proposing through the changes to CEPA, which are indicative of resolve to implement international commitments through federal policy, are echoed and put into action by decision-makers at provincial and municipal levels. The Adams Mine proposal is one such situation and opportunity. It is incumbent upon the federal government to ensure that an "in-Ontario" solution to Metro Toronto's municipal solid waste problem is given full and fair consideration before any decision is made to export the waste to the U.S.

The Action Group urges the federal government to focus on the following key issues:

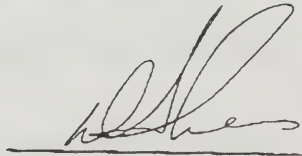
1. The **positive results of the technical analyses** of the Adams Mine proposal to date provide the necessary proof that the project is feasible both environmentally and economically. Therefore, Rail*Cycle*North's proposal

should not be abandoned unless some other option is shown to be clearly superior in both respects;

2. Any comparison of the Adams Mine proposal with U.S. options must include a comparison of environmental and economic benefits to Ontario and Canada;
3. The Adams Mine alternative for disposing of Metro Toronto's solid waste is consistent with provincial and federal environmental policy. U.S. solutions are not;
4. The Adams Mine alternatives presented by Rail*Cycle*North reflect provincial policy encouraging private/public sector collaboration; and
5. A decision to export its municipal solid waste to the United States when an "in Ontario" solution exists indicates a lack of direction, an attempt to circumvent the *Ontario Environmental Assessment Act*, and federal environmental legislation and regulations. All levels of government must adhere to sound and consistent environmental policies.

This will certify that the foregoing is endorsed by the Executive and member communities of the Northeastern Ontario Municipalities Action Group, December 4, 1995.

Chairman
Mayor David Hughes
Cochrane

A handwritten signature in dark ink, appearing to read 'David Hughes', is written over a horizontal line.



Northwest
Territories Energy, Mines and Petroleum Resources

MAR 29 1996

FAX: (819) 997-0449

Ms. Ruth Wherry
CEPA Office
Environment Canada
15TH FLOOR, PLACE VINCENT MASSEY
HULL PQ K1A 0H3

Dear Ms. Wherry:

Comments on the Federal Government's Response
"Its about our health! Towards Pollution Prevention"

Attached is a copy of our review of the federal government's proposals to renew the Canadian Environmental Protection Act (CEPA).

We welcome the opportunity to provide comments, and will be interested in receiving a copy of a synthesis of the responses received by your office. If you have any questions about our submission, please contact Dr. Michael Cunningham, Director of Mineral Resources (403) 920-3217.

Sincerely,

Graham Nicholls
Deputy Minister

- c. Ms. Jacqueline Scott, Technical Advisor
Environmental Policy and Regulation Resource Management Division
Natural Resources Canada, Mining Sector

Attachment



Northwest
Territories Energy, Mines and Petroleum Resources

COMMENTS ON THE FEDERAL GOVERNMENT'S RESPONSE TO THE STANDING COMMITTEE ON ENVIRONMENT AND SUSTAINABLE DEVELOPMENT'S FIFTH REPORT

INTRODUCTION

The Government of the Northwest Territories' (GNWT) Department of Energy, Mines and Petroleum Resources (EMPR) has reviewed, and is providing comments on, the federal government's response to the recommendations of the Standing Committee on Environment and Sustainable Development's Fifth Report with respect to the *Canadian Environmental Protection Act* (CEPA). We based our review on our position that environmental protection legislation must be stable, harmonized both within and between governments and government departments, and founded on scientific standards that meet the needs of a sustainable society. This is the context for our comments.

NEED FOR CLARITY AND CERTAINTY IN DEFINITIONS AND PRINCIPLES

EMPR has mediated between regulators and the mineral industry when problems of application and interpretation of legislation have arisen. Definitions and principles expressed in an act are the foundation for interpreting the intent of any obscure provisions. It is critical that definitions in CEPA are clear and unambiguous, and principles are rational and sound. All principles and definitions, and indeed the Act, must be based on the best scientific data and evidence available, and on sound risk assessment with the objective of managing risk cost-effectively.

EMPR has concerns about the "Precautionary Principle". If the Precautionary Principle is invoked, the next steps that must necessarily follow are 1) to find whether the technology exists to address the problem or uncertainty, 2) to apply the technology to solve the problem or uncertainty, and, based on the answer, 3) to augment or reduce pollution prevention measures accordingly. Decisions to invoke the Precautionary Principle must be reviewed periodically, within defined timelines, and re-evaluated in the context of the latest technologies. We support the approach taken in Proposal 8.11, and urge the federal government to explicitly incorporate this type of approach in CEPA.

March 29, 1996

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Important definitions that must be included or clarified in CEPA are definitions for "pollution" and "ecosystem approach", which should be science-based, and refer to economic impacts and human activity. "Products of biotechnology" and "biotechnology" must be defined and the definitions must recognize the use of biotechnologies in the mineral industry, not solely for treating effluent, but as a process to concentrate raw materials. Use of the term "controlling" or "controls" must be accompanied by a clearly defined set of assessment criteria about what is to be controlled.

The definition of "waste" must be crafted so that recyclable metals are not considered waste. Appropriate scientific definitions for terms such as toxic, bioaccumulated and virtual elimination must be given. Any definitions relating to metals must not be premised on the incorrect assumption that all metals are toxic, and must recognize that metals are a natural part of the environment. It is the form and concentration of the metal that determines the toxicity.

ROLE OF ABORIGINAL PEOPLE

The Report contains many proposals for involving Aboriginal people in cooperative approaches to environmental protection. EMPR has two concerns. First, the proposals are vague, and do not contemplate 1) how Aboriginal people would be involved, and 2) who would be designated as the appropriate and acceptable representative(s) for all Aboriginal peoples in Canada. Secondly, the rationale for entering administrative agreements with Aboriginal people should be based on their special legal and constitutional status, and their links to the land. The connections between Aboriginal rights and some pollution control measures are obvious, but the link between Aboriginal rights and, for example, regulation of fuel emissions is attenuated. How Aboriginal people should be involved and represented is important. The mineral industry needs to know who the regulators are, who is legitimately responsible for administering CEPA, and that those responsible express the wishes of those they represent. It would send a confusing message to the mineral industry if Aboriginal representatives for CEPA approved some type of polluting activity, but co-management boards established under land claims in the Northwest Territories (NWT) did not.

Also, the Report refers to the involvement of Aboriginal people that operate under self-government, comprehensive claims or specific claim agreements. The Treaty 8 Dene in the NWT is presently negotiating for Treaty Land Entitlement and a "coexistence" agreement. Jurisdictional conflicts commonly result in problems for mineral developers, and the Treaty 8 Dene must have the same role accorded to other groups negotiating under comprehensive/specific claim processes.

HARMONIZATION, ADMINISTRATION, REGULATORY GAPS AND OVERLAPS

Sections C and D of a separate submission from the GNWT's Department of Renewable Resources, documents concerns about environmental management agreements and harmonization of environmental management. Two issues they highlighted were the issues of 1) the need for financial resources to administer equivalency agreements, and 2) inconsistencies between the Report and the national harmonization process. These concerns must be addressed if the NWT's mineral industry is to be provided with a harmonized, clear regulatory framework for mineral development. The following discussion amplifies and adds to the concerns already expressed by Renewable Resources, but is made in the context of mineral development.

The Report offers few concrete suggestions for implementing cooperative management. Proposals for cooperative management and harmonization need to be developed multi-laterally, and cooperatively. Timelines and criteria must be defined. Explicit strategies for carrying out management plans must be outlined. Ultimate constitutional responsibility needs to be determined within the cooperative management framework. The impression of EMPR reviewers is that proposals in the Report run counter to government trends to down-sizing and cost cutting. The proposals will be costly to carry out, administer and monitor. The discussion in the first paragraph in Chapter 5, concerning the Crown's potential liability for failing to enforce regulatory standards, provides justification for paring down CEPA to contain what is critical to maintaining environmental quality. More legislation is not necessarily better legislation, nor is it cost-effective in terms of protecting the environment. Harmonization may provide the answer to these problems.

In Proposal 4.1, the federal government states it will retain authority to research, gather and disseminate information on pollution and pollution prevention. Retaining authority in this area is meaningless unless it is exercised. Recent federal budgets have cut funding for these types of programs in the North. Meanwhile, the federal and territorial governments and the northern mineral industry have identified a critical need for baseline information to support decisions about mineral development, crucial to economic development in the North. It would make economic sense to enter into environmental management agreements for the activities mentioned in Proposal 4.1 so that they can be done in the North, by northern experts, to meet northern environmental concerns. But the agreements must provide the funds necessary to carry out the research. EMPR cannot emphasize strongly enough, the need to answer some of these environmental questions so that mineral development is facilitated.

Some concerns about the costs of certain proposals, and who should bear these costs, are expressed elsewhere in this submission. EMPR recommends that funds collected through economic instruments (Proposal 2.13), permitting and licensing (Proposal 7.5) and fines and penalties (Proposal 5.12) should not go into general government revenue, but should be allocated to environmental programs.

Proposals 6.1 to 6.6 are inconsistent with harmonization objectives. If implemented they may duplicate other information requirements for environmental screening in the NWT (for example, spill contingency planning, and authorizations under legislation, including the *Northwest Territories Waters Act*, and *Fisheries Act*). This duplication of other legislated pollution prevention approaches must be avoided. Further duplication will occur if the definition of "nutrient" is adopted. Sewage produced by exploration and mining camps would be regulated not only under the *Fisheries Act* and the *Northwest Territories Waters Act*, but CEPA as well.

The increasing emphasis on environmental and compliance monitoring is concurrent with interest (sometimes, but not always based on regulatory authority) by government agencies to have certain types of information reported. For each substance of interest under Proposal 4.2, CEPA should harmonize reporting requirements for that substance with reporting requirements of all other federal and territorial regulatory agencies.

In the context of air quality management, frameworks must clearly address the issues of transboundary movement of potential contaminants. Recognized scientific factors of transport, such as concentrations of emissions in a regional context and weather patterns, must be considered in setting any comprehensive management strategies. Baseline monitoring is very important, and proposed cutbacks should consider environmental factors. The issue can be addressed under the Environmental Management Framework Agreement. The useful mechanism should be acknowledged, but not duplicated in CEPA.

ENVIRONMENTAL RIGHTS LEGISLATION

The GNWT was the first Canadian jurisdiction to successfully introduce environmental rights legislation, which is a positive step in placing the responsibility on citizens, to take actions to protect the environment. However, in the NWT, the federal government (which has considerable powers over resource development) appears on the verge of becoming virtually paralysed in its decision-making on natural resource development, through fear of litigation. If Proposal 3.9 is enacted, it may provide another avenue for litigation by groups opposing development in the North. Even if their litigation is unsuccessful, the process will likely increase costs to the federal government and developers, and ultimately slow or halt northern mineral development and deter mineral industry investment. Before taking this step, the federal government should review Canadian environmental rights legislation to assess the presence and efficacy of provisions to prevent frivolous and vexatious actions, or actions that serve to advance a group's policy goals (for example preventing mineral development) rather than goals of environmental protection.

POWERS AND ENFORCEMENT

Renewable Resources' separate submission noted that the federal government is attempting to expand its role in environmental management. EMPR is troubled by the expansion of, not only the federal government's role, but powers of authorities under CEPA. It is not acceptable for a Minister (as in Proposal 4.2) to have unfettered discretion to " . . . *require submission of whatever data is in one's possess or control* . . . " The power must have bounds. For Proposals 5.8 and 5.9, it is important to the mineral industry that powers are not broadened indiscriminately without appropriate training for personnel.

CONCLUSIONS

EMPR cannot fully comment on the substance of the Report until it is reflected in draft amendments to CEPA. We are concerned about the potential impact of this significant piece of legislation on the mining industry, if the issues raised by the territorial government are not addressed. We look forward to the next stage of the consultation process and the opportunity to comment on draft amendments.



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MAR 21 1996

Mr. Ed Norrena
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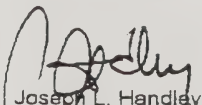
Dear Mr. Norrena:

**Northwest Territories Response on CEPA
Environmental Protection Legislation Designed for the Future - A Renewed CEPA**

On behalf of the Government of the Northwest Territories Department of Renewable Resources, I am pleased to enclose our response to the Federal Government's proposal to amend the *Canadian Environmental Protection Act*. We sincerely appreciate the opportunity to provide comments and recommendations with respect to a renewed CEPA during these early stages of the process and trust our comments will assist the CEPA Office in preparing a revised act which reflects the needs and required activities to ensure the protection of Canada's natural environment.

We strongly encourage the continuation of open and honest discussion between provincial, territorial and federal officials with respect to this important initiative. Should you have any comments or questions regarding our response, please do not hesitate to contact Mr. Emery Paquin, Director of the Environmental Protection Division, at (403) 873-7654.

Yours sincerely,



Joseph L. Handley
Deputy Minister

Enclosure

c. CEPA Federal-Provincial Advisory Committee

ENVIRONMENTAL PROTECTION LEGISLATION DESIGNED FOR THE FUTURE - A RENEWED CEPA

The Government of the Northwest Territories' Department of Renewable Resources has conducted a comprehensive review of the document entitled 'Environmental Protection Legislation Designed for the Future - A Renewed CEPA'. This paper represents the views and recommendations of the department with respect to the federal government's proposal to amend the *Canadian Environmental Protection Act*.

General Comments

To appreciate the *Canadian Environmental Protection Act's* role in protecting the northern environment, it is important that the federal CEPA Office understand the respective federal and territorial roles and responsibilities in environmental management.

With respect to territorial legislation, the federal *Northwest Territories Act* is the sole source of legislative jurisdiction for the territorial Commissioner-in-Council. Under this Act, the Commissioner-in-Council has wide legislative scope for environmental management. It is thought that section 13 *prime facie* would sustain virtually all forms of environmental regulation subject to the test for inconsistency under the federal/provincial paramountcy rule. Under this rule, provincial or territorial legislation is rendered inoperable if there is an impossibility of dual compliance, an express contradiction or, possibly, an administrative conflict between the two orders of government. Duplicative or supplementary legislation will not invoke federal paramountcy. Territorial legislation may also not affect the proprietary rights of the Crown to land, water or resources which are owned by the federal government.

The role of protecting the North's natural environment is one of shared responsibility between the federal and territorial governments. The Government of the Northwest Territories is fulfilling this responsibility through administration and enforcement of nine principle statutes including the *Environmental Protection Act*, *Pesticide Act*, *Wildlife Act*, *Forest Management Act*, *Forest Protection Act*, *Transportation of Dangerous Goods Act*, *Public Health Act*, *Commissioner's Lands Act* and *Parks Act*. The Government of the Northwest Territories also administers the *Environmental Rights Act* which provides residents with the right to access information respecting environmental contaminants, request that departments commence investigations respecting discharges of contaminants, and commence private prosecutions of alleged statutory offenses.

Some quasi-provincial responsibilities associated with environmental management in the Northwest Territories continue to be retained by the federal government. This has created a patchwork quilt of federal and territorial programs affecting northern environmental quality. Federal departments with major environmental protection roles include Fisheries and Oceans, Transport including the Coast Guard, Indian Affairs and Northern Development, the National Energy Board, Environment and Parks Canada.

The emergence of representative government in the Northwest Territories has significantly reduced the earlier need for the federal government alone to deliver a complete slate of federal and provincial-type environmental protection programs. The Government of the Northwest

Territories has evolved steadily, through building its own programs and the devolving of provincial-type programs, such as forestry and health, from the Government of Canada. Work is continuing toward the further devolution of land, water and mineral management responsibilities.

The settlement of aboriginal land claims and the resulting creation of new public institutions is also adding to the level of self-sufficiency in the North. Currently, one land claim agreement, the Inuvialuit Final Agreement (Western Arctic), has been implemented in the Northwest Territories. Three further land claim agreements; the Gwich'in Final Agreement (Mackenzie Delta), the Nunavut Final Agreement (Eastern Arctic) and the Sahtu Final Agreement (Central Mackenzie District) have received Royal Assent and are undergoing implementation. In the other regions of the Northwest Territories, the North Slave is pursuing a land claim agreement while the South Slave and Deh Cho (South Mackenzie District) are involved in treaty and self government discussions respectively.

What is Liked About 'A Proposed CEPA'

While there are some important exceptions, many of the proposals to renew CEPA are consistent with the goals and objectives of the Department of Renewable Resources. While not exhaustive, this section outlines some of the proposed amendments to CEPA which are supported by the Department.

There is a great deal of convergence between proposed guiding principles as described in the federal government's response and the GNWT's *Sustainable Development Policy* including the ecosystem approach, biological diversity and cooperation between all orders of government and Aboriginal peoples. In addition, the principles of pollution prevention, interrelationship of environmental and economic factors and user-producer responsibility are embedded within GNWT laws and policies. The Department of Renewable Resources supports the federal proposal that these guiding principles be incorporated into the Preamble of the renewed *Canadian Environmental Protection Act*.

In general, the Department of Renewable Resources supports the proposals respecting the current and future greening of the "federal house". This is essential to the credibility of the federal government if it wishes to continue in a leadership role involving provincial and territorial governments. The 'Canada/NWT Framework Agreement on Environmental Cooperation in the Northwest Territories' which was signed by the former federal and territorial Ministers responsible for the environment explicitly recognizes this principle. The Agreement states:

"The Parties support the principle that, at a minimum, all federally operated facilities and facilities operating on federal land meet the standards, guidelines, and regulations and legislation requirements of the Northwest Territories."

In order that this principle can be further recognized by a renewed CEPA and to strengthen the "federal house" provisions, the Department of Renewable Resources recommends the inclusion of a similar principle in the Preamble of the renewed *Canadian Environmental Protection Act*. Such actions would further clarify the federal government's intentions as contained in recommendation 10.8 (page 79).

When CEPA was assented to in June 1988, several new 'tools' were included in the enforcement provisions including greater public participation rights i.e. commence investigations and private prosecutions, larger sanctions for noncompliance and increased scope of available court orders, among others. Many of the provinces and territories, including the NWT, subsequently

incorporated many of these provisions as their own environmental legislation was amended. The federal government response once again proposes to expand the enforcement 'toolbox' through inclusion of such instruments as administrative monetary penalties, negotiated settlements and other non-regulatory approaches to environmental protection. These could be effective if there was a fair and predictable way to apply them. While the Department of Renewable Resources recognizes the potential benefits of these new approaches and supports their inclusion in a renewed CEPA, we are nevertheless also aware of the possibility that the territorial government may now be expected to incorporate similar approaches in environmental legislation.

Issues and Recommendations

In May 1995, the Department of Renewable Resources made a presentation to the House of Commons Standing Committee on Environment and Sustainable Development during their public meeting in Yellowknife. The presentation focussed on three major areas: ocean disposal, the application of CEPA on "federal Lands" and intergovernmental cooperation. These and other issues are discussed in greater detail below as they apply to the federal response.

A. The Arctic - A Special Case in Terms of Ocean Disposal of Wastes

During the presentation to the Standing Committee, the department strongly recommended that CEPA recognise regional differences in the use of marine environments in Canada. This recognition has been now acknowledged in the federal government's response (page 64) where it states:

"The Arctic is a unique ecosystem. The extremely cold climate severely restricts the rate at which wastes can break down in the environment as well as the choice of waste disposal options. The Government of Canada recognizes that, once an activity or development of a project is terminated, the removal of resulting wastes and excess materials from the Arctic is preferred to other methods of disposal, and that ocean disposal of wastes in the North should be undertaken only where it is the environmentally preferable and practical option and only for non-hazardous wastes."

The Department of Renewable Resources is pleased that this recognition is provided with respect to ocean disposal in Canada's Arctic region. The federal government's response does not however, contain a recommendation as to how this recognition is to be incorporated in the renewed CEPA. The Department of Renewable Resources recommends that it be incorporated as a further guiding principle within Part VI.

B. The Application of CEPA to "Federal Lands"

Federal lands are defined in section 52(a) of CEPA to include "lands that belong to Her Majesty in right of Canada or in respect of which Her Majesty in right of Canada has power to dispose and all waters on and air above such lands ...". No changes are being proposed to this definition in the renewed CEPA.

In the Northwest Territories, blocks of federal land usually coincident with communities and highway systems, have been transferred to the control of the Northwest Territories' Commissioner-in-Council. The Territorial Government has the right of beneficial use and disposal of these lands but is not vested with title. With the exception of fee simple lands

transferred to Aboriginal groups through the land claims process, all lands in the Northwest Territories ultimately belong to Her Majesty in right of Canada.

During intergovernmental discussions in 1988, senior Environment Canada officials stated that it was not the intention of Part IV to regulate activities on lands in the Northwest Territories other than federal works, undertakings and First Nations reserve lands. The current wording of section 52(a) and the mechanism through which land is transferred to the Commissioner-in-Council creates significant confusion with respect to "federal lands" as well as the potential for both environmental protection gaps and overlaps between Part IV of CEPA and environmental protection responsibilities which could be exercised by the Department of Renewable Resources. The Government of the Northwest Territories has to date been reluctant to develop regulations in these areas because of this confusion and possibility of overlap and duplication.

It is strongly recommended that the renewed CEPA clarify the definition of "federal lands" as it applies to land in the Northwest Territories. This may be accomplished by establishing a separate definition for "federal lands" which are located in the Northwest Territories and Yukon, or alternatively those north of 60°N latitude. At this time, more detailed recommendations are not being made but, regardless of the means, the issue of "federal lands" requires clarification so as to avoid any further confusion.

C. Equivalency, Administrative and Other Environmental Management Agreements

It has been proposed that equivalency and administrative agreements continue using largely the current model. Sections 34(6) and 63(3) of CEPA currently establish the authority to enter into equivalency agreements with provinces and territories. Such agreements apply to a specific regulation for substances listed on Schedule 1 - List of Toxic Substances, and international air pollutants, respectively. Whenever an equivalency agreement with a province or territory is in place, the federal regulation would then not apply to that province or territory. Section 98 administrative agreements give the federal Minister of Environment authority to enter into agreements with provincial and territorial governments with respect to the administration of CEPA. Although Environment Canada has stated that these features "open the door for creative implementation of the Act through cooperative partnerships with other governments or cooperative delivery of programs such as environmental monitoring, compliance, inspections and law enforcement", very few agreements have been signed since 1988.

The advantages to the Northwest Territories signing equivalency and administrative agreements are not apparent, other than to avoid potential duplication and overlap of programs. This is especially true as no financial resources currently accompany these additional responsibilities. This lack-of-advantage is further emphasized through recommendation 2.11 (page 18) which provides for the federal government to retain full authority to enforce CEPA even upon signing an administrative agreement. If the federal government anticipates the equivalency and administrative agreement provisions under a renewed CEPA to be utilized to a greater degree than they are currently, then there must be some further advantage provided to the Northwest Territories for taking on these additional responsibilities.

D. Implications for the Harmonization of Environmental Management

At the same time as the federal Standing Committee on Environment and Sustainable Development was examining CEPA, another review of environmental management in Canada was being undertaken. In November 1993, the Canadian Council of Ministers of the Environment

(CCME) identified harmonization of environmental management as its first priority. Officials from the federal, provincial and territorial environment departments began multilateral negotiations to develop an Environmental Management Framework Agreement (EMFA). This agreement is intended to promote improved efficiency and environmental management through:

1. the clarification of government roles;
2. reduction of overlap and duplication; and
3. consistency in environmental laws and policy.

Unfortunately, the mandate of the House of Commons Standing Committee did not reference the harmonization process being conducted by CCME. Thus the review of CEPA did not take into account the proposed evolution of environmental management and protection.

Some of the Standing Committee's recommendations, as well as the federal government's response to these recommendations, are proposing changes to CEPA which can be viewed as being inconsistent with the national harmonization process. Since the draft EMFA is a general document outlining federal-provincial-territorial harmonization based on which order of government is best able to administer responsibility areas, the inconsistencies of the federal response with the Agreement largely involve the division of federal, provincial and territorial roles and responsibilities. Although the federal government emphasizes intergovernmental cooperation and the need to minimize duplication and overlap throughout the report, the response shows that the federal government is attempting to increase its presence in some areas of environmental management, especially controlling toxic substances. This expansion of the federal government's role would be considered inconsistent with the draft EMFA since it increases overlap and duplication by intruding into the Northwest Territories' future responsibility for environmental management over land-based resources.

A comprehensive review of the federal government's proposal for a renewed CEPA from the perspective of the draft EMFA has been included as Appendix A to this submission. The Government of Canada is encouraged to prepare the renewed CEPA within the spirit and intent of this multilateral framework agreement.

E. Other Issues

The Government of Canada proposes to broaden the current "whistleblower" protection provisions so that all federally-regulated employees would be able to report violations of CEPA or its regulations. The Northwest Territories' *Environmental Rights Act* has whistleblower provisions which, like the renewed CEPA, apply to a broad spectrum of persons. The ERA also applies however, to all persons who report or propose to report "to the appropriate authority any release or any likely release of a contaminant to the environment". The CEPA Office should review whether CEPA's "whistleblower" provisions should be further expanded to include reports of violations of all federal environmental statutes or their regulations, in addition to CEPA.

Recommendation 5.7 (page 37) proposes to amend CEPA to provide for cease-and-desist orders. The Northwest Territories' *Environmental Protection Act* (EPA) contains subsection 4(1) "protection orders", subsection 6(1) "stop orders" and subsection 7(1) orders to "remedy or repair damage". EPA sections 8 and 8.1 further specify the manner in which these orders are to be served, either written or, in the event of an emergency, verbal. The CEPA Office is encouraged to review this and other provincial-territorial statutes when designing the proposed cease-and-desist orders.

APPENDIX A

IMPLICATIONS FOR THE HARMONIZATION OF ENVIRONMENTAL MANAGEMENT

The federal government's response to the CEPA review comprised of 10 chapters. These chapters put forth the federal government's philosophy with respect to environmental protection (the first chapter - Guiding Principles) and then subsequently detail how this philosophy is to be realized in a revised CEPA (the remaining nine chapters - Administration; Public Participation; Ecosystem Science and National Norms; Enforcement; Pollution Prevention; Biotechnology; Controlling Pollution and Wastes; Controlling Toxic Substances; and Government Operations, Federal Lands and Aboriginal Lands).

In judging whether or not the federal government's response to the CEPA review is consistent with the draft Environmental Management Framework Agreement (EMFA), three main aspects of the response can be examined: the principles put forward for a revised CEPA, the division of federal-provincial-territorial roles and responsibilities for environmental management, and the processes through which these roles and responsibilities will be carried out.

Since the draft EMFA is a general document outlining federal-provincial-territorial harmonization, the inconsistencies of the federal response with the Agreement largely involve the division of federal and provincial roles and responsibilities. Although the federal government emphasizes cooperation with the provinces and territories and the need to minimize duplication and overlap throughout the report, the response shows that the federal government is attempting to increase its presence in some areas of environmental management, especially in controlling toxic substances. This expansion of the federal government's role would be considered inconsistent with the draft EMFA since it increases overlap and duplication by intruding into provincial and territorial responsibility for environmental management over land-based resources.

CCME's Strategic Planning Committee (SPC) is also concerned about an increased federal presence in certain areas of environmental protection because of financial restraint. It is felt that Environment Canada is having difficulty meeting even its present obligations under CEPA. According to the SPC, "Federal Program Review is reducing the ability of Environment Canada, and other departments, to deliver their current mandate. This raises valid concerns about the ability of Environment Canada to take on the new responsibilities..."¹

Chapter 1. Guiding Principles

The guiding principles put forward in chapter one are consistent with those contained in the draft EMFA. These principles include the goal of sustainable development and pollution prevention as the priority approach for environmental protection. The draft EMFA and the federal response also both see the precautionary principle, increased user/producer responsibilities, the maintenance of biodiversity, and the ecosystem approach as mechanisms to achieve the goal of sustainable development. Furthermore, the federal response also emphasizes the importance of cooperation with the provinces, territories and Aboriginal Peoples - a principle constantly referred to in the draft EMFA. According to the federal government, "the laws and actions of each jurisdiction are all critical to the protection of the environment, prevention of pollution and sustainable development".²

Chapter 2. Administration

This chapter is where the federal government outlines how it will reduce overlap and duplication and promote cooperation with the provinces, territories and Aboriginal Peoples. The federal response proposes expanding the range of tools to ensure that all parties are working together towards the goal of sustainable development. These tools largely take three forms - a National Advisory Committee, various agreements with provinces/territories/Aboriginal Peoples, and economic instruments/voluntary initiatives.

National Advisory Committee

The federal government is proposing to replace the Federal-Provincial Advisory Committee with a new National Advisory Committee. The National Advisory Committee will essentially have the same functions as the existing FPAC (to advise the federal Minister of Environment on proposed CEPA regulations and environmental matters) but will now also be composed of aboriginal representatives as well as provincial and territorial representatives.

The National Advisory Committee can be considered consistent with the draft EMFA since it attempts to involve Aboriginal Peoples in environmental management. The draft EMFA also supports communication and coordination between the federal, provincial and territorial governments. The Committee would be inconsistent with the draft EMFA however, if it took a lead role in policy development or impeded attempts of provincial and territorial governments to gain more control over aspects of environmental management within areas of their jurisdiction.

Various Agreements with the Provinces/Territories/Aboriginal Peoples

The federal response also proposes that a renewed CEPA expand administrative, equivalency and environmental management agreements to all parts of the Act to reduce overlap and duplication. The expansion of these agreements would not redefine the federal and territorial roles in environmental protection, but instead would continue to require provinces and territories to administer existing federal responsibilities under CEPA.

The Department of Renewable Resources would not consider the expansion of administrative, equivalency and environmental management agreements as being the primary mechanism by which to reduce overlap and duplication. This is because these agreements keep the authority (and accountability) of the environmental management regime proposed for CEPA in the hands of the federal government. This would cause overlap and duplication since the provinces and territories must report the monitoring and enforcement of these agreements to the federal Minister of Environment, who must then report to Parliament. The draft EMFA, on the other hand, is attempting to divide up environmental responsibilities in a manner so that provinces and territories will be directly accountable to their own legislatures.

Economic Instruments and Voluntary Initiatives

The federal government proposes a new range of tools including economic instruments and voluntary initiatives to help to administer CEPA. The federal government believes that these measures will improve efficiency since less regulation, monitoring and enforcement will be needed. Economic instruments include tradeable permit systems, deposit-refund programmes and direct financial incentives. Examples of voluntary initiatives being proposed are letters of commitment, guidelines and principles, codes of practice, standards, agreements and memoranda of understanding.

It is not known whether the role of the federal government in developing economic instruments and voluntary initiatives will be consistent with the draft EMFA. Although the draft EMFA supports the use of these instruments and initiatives, the roles of the Parties in developing market-based instruments and other policy alternatives to "command and control" have not been determined. One would expect however, that a lead federal role in developing economic instruments would be consistent with the draft EMFA since a strong federal presence would be required to maintain an equal playing field amongst competing industries.

Chapter 3. Public Participation

In a renewed CEPA, the federal government is intending to expand public participation rights. The federal government feels that the expansion of these rights would include improved communication of monitoring and reporting activities on the state of the environment to the public, increased public participation in

government decision making, and increased government responsibility and accountability for the environment.

Although increased public participation is consistent with the principles of the draft EMFA, the manner in which the roles and responsibilities of the federal, provincial and territorial governments channel this participation could be inconsistent with harmonization. For example, the draft EMFA gives the federal government the lead role in developing a national computer network registry for ambient information which the public can access. The role of environmental education, on the other hand is seen as a provincial responsibility. Therefore, the draft EMFA would assign the role of developing public education programs and materials to the provinces and territories.

The response of the federal government to the CEPA review also states that revisions to the Act would give the public better legislative means to take action against polluters. The federal government proposes to give the public the right to demand investigations of environmental infractions, to prevent violations of CEPA, and to take civil action against the violators of CEPA. These powers could cause duplication between federal, provincial and territorial monitoring and enforcement efforts if equivalency or administrative agreements have been signed. It is unclear as to how all orders of government would be required to respond to these enhanced powers of public participation.

Chapter 4. Ecosystem Science and National Norms

The federal response to the CEPA review envisions Environment Canada as being the lead government agency in developing ecosystem science and national norms.

Ecosystem Science

In the area of ecosystem science, the federal government is proposing the continued development of a National Pollution Release Inventory (NPRI), increased monitoring efforts to assess the effects of environmental policies and guidelines, and the publication and distribution of data to advise the public about all aspects of environmental quality.

The federal government taking a lead role in the development of ecosystem science, such as the NPRI, is consistent with the draft EMFA. Taking on the role of monitoring environmental policies and guidelines as well as publishing and distributing data to the public, on the other hand, may hinder harmonization efforts. Although the draft EMFA assigns the federal government the role of scientific and technical leadership for developing monitoring methods, the Agreement gives the provinces and territories a larger role in planning, coordinating and delivering discharge-based and ambient monitoring programs. The monitoring activities assigned to the federal government under harmonization are largely in the area of transboundary and international obligations.

National Norms

It is also being proposed that a revised CEPA put in place national norms. These norms include the development of "benchmarks" such as ecosystem quality objectives and will take the form of ecosystem quality guidelines, release guidelines and codes of practice. Environment Canada will also develop plans, designs and demonstration projects for the prevention, control and reduction of environmental pollution.

The consistency of the federal government's development of national norms with the roles laid out in the draft EMFA would depend on the extent to which Environment Canada coordinates its activities with provincial and territorial governments. Although the federal government states in its response to the CEPA review that it values federal-provincial-territorial cooperation in the development of guidelines and codes of practice, Environment Canada also mentions throughout the response that it is important that the federal government ensure that high levels of environmental standards are maintained. Federal control over maintaining levels of environmental protection would be seen as inconsistent to harmonization since the

draft EMFA envisions the provinces and territories as taking the lead role in the development of environmental standards and objectives. The federal role should only support the provinces and territories in setting these standards, through the development of national guidelines.

Chapter 5. Enforcement

In this chapter, the federal government recommends that there be more flexibility in the use of enforcement tools in a revised CEPA. Flexibility involves using administrative measures rather than the courts and encouraging regulates to take more responsibility for ensuring compliance. Flexibility is seen as a means of increasing efficiency since relying on the court system for enforcement often prevents compliance from being achieved in a timely manner. Alternative enforcement tools proposed include the use of administrative monetary penalties, negotiated settlements, ticketing and cease-and-desist orders. Although the federal government still sees the courts as having a role in enforcement, it recommends classifying offences into categories to streamline the most serious cases.

The draft EMFA also proposes alternate enforcement tools but advocates that the federal government use these tools within its own area of jurisdiction (transboundary or international matters and the "federal house"). All other enforcement measures are seen as largely a provincial and territorial responsibility since it is assumed by the draft EMFA that these jurisdictions will have the role of regulating most activities impacting the environment. Therefore, revisions to CEPA are more likely to be inconsistent with the draft EMFA if they give the federal government a larger role in enforcement efforts. According to the draft EMFA, Environment Canada should support the provinces by coordinating and recommending enforcement tools. It should not become involved in overseeing provincial enforcement activities.

Chapter 6. Pollution Prevention

In its response to the CEPA review, the federal government proposes shifting the focus of environmental protection activities towards minimizing or avoiding the creation of pollution and wastes. The two main areas which the federal government identifies for revision to achieve this shift are pollution prevention plans and improved response to environmental emergencies.

Pollution Prevention Plans

In order to shift the emphasis of CEPA to pollution prevention, Ottawa intends to amend the Act to give Environment Canada authority to require the development of pollution prevention plans for toxic substances. According to the response, "the Minister of Environment would determine which toxic substances plans are required, who is to prepare plans and the circumstances under which the plans are required. For the thousands of substances not subject to regulation, the Government would encourage voluntary pollution prevention planning and believes that this has potential for significant environmental and economic gain".³ The monitoring of pollution prevention plans would occur through the NPRI which would allow companies undertaking pollution planning to demonstrate to the public that they are committed to improving their environmental performance. The federal government would also take a lead role in research and demonstration projects to encourage the use of clean technologies.

The intent of the federal government to take a coordinating role in encouraging the use of clean technologies would be consistent with the draft EMFA. However, the draft EMFA would not support the federal government's role in developing pollution plans for specific substances. The LRC notes that greater federal activity in this area would likely duplicate the efforts being made by some provinces and territories who are emphasizing mandatory, rather than voluntary, pollution prevention planning. The draft EMFA also assigns the responsibility for developing pollution prevention plans to the provinces and territories since they have the resources to enforce these plans and are already involved in regulating industrial processes.

Environmental Emergencies

The federal government also proposes taking on a greater role in dealing with environmental emergencies. It is intending to strengthen its legislative base to address all environmental aspects of emergencies including prevention, preparedness, response and recovery. Environment Canada recommends working with the provinces and territories to identify sites with hazardous wastes to aid in prevention and preparedness. To aid in response, the federal government plans to continue discussions on the development of a national spill reporting network.

A greater federal role in environmental emergencies would probably be inconsistent with the draft EMFA since the Agreement states that the system in place works well. Although the responsibility for emergency management is shared by the three orders of government, the draft EMFA sees the provinces and territories as taking the lead role since they are responsible for public safety and have more resources "on site". The federal role in identifying sites with hazardous substances and spill reporting, however, would be consistent with the draft EMFA.

Chapter 7, Biotechnology

The federal government intends to regulate and manage biotechnology only for those areas which are not covered by other Acts. It proposes a criteria for biotechnology products based on the existing criteria for toxicity under Section 11 of CEPA.

The federal government's role proposed in this chapter is consistent with the draft EMFA because it is dealing with new substances and these substances have transboundary movements and may impact biodiversity. The federal government also maintains that there would be no overlap and duplication in regulating these products since it is intending for CEPA to serve only as a "safety net" for those areas that are not covered by other federal Acts.

Chapter 8, Controlling Pollution and Wastes

This chapter looks at the federal government's role in managing pollution which has transboundary or international implications. The response proposes that the federal government work with provincial and territorial governments as well as Aboriginal Peoples to establish a framework to address international air issues. The federal government also proposes to develop provisions for preventing transboundary water pollution, to expand regulations to control waste (including its import and export), and to impose restrictions on fuel and automobile emissions. Furthermore, the federal government intends to amend CEPA to authorize the creation of environmental objectives and codes practice to preserve the quality of coastal areas through guiding the reduction of contamination from land-based sources of pollution. As well, the federal government proposes additional controls for the dumping of wastes at sea including the incorporation of a waste assessment framework which would require applicants to investigate other options for disposal.

This chapter is consistent with the draft EMFA because the federal government has been assigned the lead role for environmental management having international or transboundary implications. The federal government has also put forward its intention to work with the provinces, territories and Aboriginal Peoples to establish a framework for managing air pollutants and establishing emission targets. This is consistent with the draft EMFA's sections on intergovernmental cooperation for overlapping jurisdictions in environmental protection. The federal government also noted that it would "guide" the reduction of contamination from land-based sources of pollution impacting coastal areas which is consistent with the draft EMFA's support for national guidelines instead of standards.

Chapter 9, Controlling Toxic Substances

The federal government's response to the CEPA review proposes strengthening the effectiveness of Part II

of CEPA. According to the response, "the Government of Canada recognizes that substances causing or capable of causing adverse effects in the environment or to human health remain a significant concern for Canadians, and that there should continue to be a strong federal role in environmental and human health protection in this area. CEPA has been and will continue to be the principal legislative tool for the federal government to deal with dangerous substances that can find their way into the environment".⁴

The federal government intends to increase its role in controlling toxic substances by assessing a larger number of substances in less time which will lead to more substances being found "toxic". The federal government intends to reform the existing substances program to include a priority substances list, a revised assessment process and the incorporation of the key elements of the recently announced Toxic Substances Management Policy (TSMP) into CEPA. The goal is to virtually eliminate toxic substances. Substances which are not defined as toxic will be controlled throughout their entire life cycles in order to prevent or minimize their release into the environment.

This Chapter is the least consistent with the division of roles and responsibilities set out in the draft EMFA. The control of toxic substances and the management of non-toxic substances throughout their life cycles is seen as an area of provincial and territorial jurisdiction because it is related to the management of land based resources and public safety. Also, provincial and territorial licensing and permitting is seen by the Lead Representatives Committee (LRC) as the principal regulatory delivery vehicle in Canada, along with monitoring and compliance. Furthermore, the LRC feels that bans are unwise and it would not agree with the federal government's proposed attempt to virtually eliminate toxic substances. The Committee would also argue that the definition of "toxic" is too broad.

The LRC would argue that these revisions to CEPA would result in further legislative duplication and overlap and in costs that neither level of government can bear. Furthermore, the draft EMFA calls for the joint development of national guidelines and the enforcement of the implementation of these guidelines by the provinces and territories, rather than the federal government taking a lead role.

Chapter 10. Government Operations, Federal Lands and Aboriginal Lands

The measures in this chapter are consistent with the draft EMFA since the responsibility for the "federal house" is seen as being under federal government jurisdiction. The draft EMFA defines "federal lands" as lands belonging to the federal Crown (excluding those lands where administration and control has been transferred to the Commissioner of the Yukon or the NWT); any lands that are set apart for Indian bands which are subject to the Indian Act; and federal facilities, crown corporations or agencies. Therefore, the draft EMFA's definition still sees most of the lands within the NWT as being under the federal government's jurisdiction.

The draft EMFA does not discuss fee simple lands or subsurface rights acquired under land claims agreements. It is mentioned that the Framework Agreement "does not affect existing aboriginal or treaty rights of any of the Aboriginal people of Canada under Section 35 of the *Constitution Act, 1982*", but how these rights will be accommodated in terms of the new roles and responsibilities being negotiated in the draft EMFA is not addressed. It is possible that questions relating to environmental management on lands governed by land claims will be taken up by the Environmental Impact Assessment Schedule of the draft EMFA, but the federal government has refused to release this schedule for public consultation.

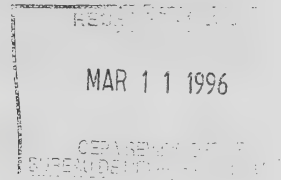
Footnotes

1. Toby Vigod. Memo to the Strategic Planning Committee on September 11, 1995, p.1.
2. CEPA Review: The Government Response, p.14.
3. Ibid, p.44.
4. Ibid, p.67.
5. Draft EMFA, p.8.

NOTRE

March 5, 1996

CEPA Office
Environment Canada
15th Floor, Place Vincent Massey
Hull, Quebec
K1A 0H3



**Re: Environmental Protection Legislation Designed for the Future
A Renewed CEPA**

To the Director:

The document and its intent of being "**designed for the future**" is a positive look at issues that will effect the economy and environment of Canada and the Provinces. Our representation will be concerning the section on **Non-Hazardous Solid Wastes**, both in the area of "**new controls for exports and imports**", and "**new authority to ban exports and imports**".

Our support for the implementation of these measures as drafted, is based on a deep concern that within the Province of Ontario, investment in environmentally sound and economically competitive landfill capacity, for municipal solid waste (MSW) and industrial and commercial (ICI) solid waste, is not happening due to cross border shipping of these wastes for disposal in the USA.

Notre Development Corporation has been working with CN Rail, and the Ontario Northland Transportation Commission since 1990 to develop landfill capacity for Ontario at the Adams Mine, near Kirkland Lake, Ontario. The re-utilization of this depleted open pit property has been proven to be environmentally safe after completion of technical studies in 1995, and the site is continuing through the environmental approval process in Ontario, with approval expected early in 1997.

Due to public pressure, a bureaucratic environmental approval process, and failure of major waste companies to risk the funds to develop landfills in Ontario, municipal disposal capacity in Ontario is at a crisis stage, and private sector capacity is almost non-existent.

In 1990 to 1992, municipalities who controlled most of the capacity, specifically in the Greater Toronto Area raised their "tipping fees", the charge to outside and private sector customers to use the disposal site, to numbers as high as \$152.00 per tonne.

Notre Development Corporation

P.O. Box 237, North Bay, Ontario P1B 8K6 (705) 495-6411 • Fax (705) 495-1750

With no other capacity available in the Province, the result was that approximately 50% of the waste going to landfills in the most densely populated area of Canada is now being shipped across the border to USA landfills. This represents a loss to the Ontario and Canadian economy in the billions of dollars.

As important, with the availability of USA landfills, investment in Canadian and Ontario sites has not taken place, resulting in a shortage of long term capacity to service the residents of the Province of Ontario.

This situation has been clearly illustrated by a recent Request for Proposals by Metropolitan Toronto for private sector companies to disposal of Metro's waste for the next twenty years. The short-listed respondents are three multinational waste companies all or whom are proposing USA based sites in Michigan, Ohio, and Utah. The only Ontario option is the Adams Mine near Kirkland Lake which has been proposed since 1990. This potential contract represents the export of over 30 million tonnes of MSW over 20 years, with a contract value in excess of 1.5 billion dollars.

Of critical importance to the industry, is that if this tonnage is exported, combined with the ICI tonnage already being shipped south, there will be no incentive for investment in landfill capacity in Ontario. This will lead to a lessening of competition and many other communities with smaller tonnages, will also be forced to use USA sites. An example of this is already taking place, with a small township near Parry Sound, Ontario having its waste shipped to the USA due to a shortage of local capacity.

Unrestricted movement of non-hazardous waste will effect thousands of jobs in many sectors of the environmental industry, result in a loss of control over disposal capacity within Canada and Ontario, and move substantial profits and future investment to the USA.

An additional issue on waste disposal, is that the playing field is not level between Canada and the USA. In Ontario, no landfill has received a Certificate of Approval with a "service area" that would allow for the importation of USA non-hazardous solid wastes. In Quebec, legislation was passed that prohibits importing USA wastes in this category, yet the USA multinational waste companies can export Canadian waste to the USA without any restriction or review.

The issue of competitive and cost effectiveness is important. However the Government of Canada, and the Province of Ontario, have the responsibility to ensure that exports of non-hazardous solid wastes do not result in a negative impact on the economy and result in creating **no competition for a disposal industry in Ontario or any other Province.**

We therefore recommend that under Section 8.18, the following be part of the controls for any cross border shipment of non-hazardous permitting.

- I. that any company or municipality that is either the generator, or any contractor, that proposes to export non-hazardous solid waste under contract to the USA, or any other country, in excess of 5000 tonnes per year notify the Government of Canada of the proposed export tonnage and the destination of the waste for disposal.*
- II. that any company or municipality that is either the generator, or any contractor, that proposes to export non-hazardous solid waste to the USA or any other country in excess of 5000 tonnes per year, file with the Government of Canada an affidavit that shows capacity is not available within Canada, or the Province of its generation.*
- III. that any company or municipality that proposes to export in excess of 25,000 tonnes of municipal non-hazardous wastes to the USA, or any other country, be required to file with the Government of Canada and the Province of Origin a economic analysis of the impact such export will have on the economy of Canada, and the Province within the waste is generated, and that the Government of Canada retains the right to ban any large quantity of non-hazardous waste that may be exported to the USA should it deem there are competitive options available within the country or Province of generation.*

We believe that the above recommendations, or ones similar in nature, will provide for the following:

- ▶ the Government of Canada to encourage municipalities and the private sector to develop competitive and long term landfill capacity, within Canada, and the respective Provinces as required.
- ▶ allow the Government to scrutinize any large shipment of non-hazardous wastes to the USA, or any other country.
- ▶ provide a screening process where any large cross border shipment of non-hazardous waste, would be required, to provide an economic impact analysis on the potential loss or benefit, to respective Provinces and Canada's economy by movement to the USA, or any other country.

These recommendations will not ban a situation where there is a clear public interest in export of wastes. However, it will put the priority on development of landfill capacity and investment in Canada and Ontario, rather than taking what is now the "easy route" and exporting to the USA.

In summary, Ontario and Canada must have the ability to develop and control disposal capacity within the Province and Country. Export to the USA is very convenient in Ontario due to large available capacities in Michigan and Ohio.

The Government of Canada, and the Province of Ontario should be taking a clear position that this is acceptable only if, competitive and environmentally safe capacity is not, or cannot be provided in the Province.

Investment in landfill capacity in Ontario and Canada can and will be done, if the potential for limitations and restrictions to cross border shipping are in place. The easy way is now to ship across the border to the USA, **without the suggested restrictions contained in the CEPA proposal this will continue.**

We encourage the Government of Canada to implement the draft proposals as recommended, and trust our proposed additions, that do not provide a complete restriction to export, but an encouragement to make investments in Canada and the Province, will be considered and have merit.

Yours very truly,

NOTRE DEVELOPMENT CORPORATION



Gordon E. McGuinty
President

cc:	Hon. Brenda Elliot	Minister of Environment Ontario
	Mr. Bob Wood	MP Nipissing
	Mr. Benoit Serre	MP Temiskaming
	Hon. Chris Hodgson	Minister of Northern Development Ontario
	Hon. Al Leach	Minister of Municipal Affairs Ontario
	Hon. Bill Sanderson	Minister of Economic Development Ontario

Nova Scotia



**Department of
the Environment**

Office of the Deputy Minister

PO Box 2107
Halifax, Nova Scotia
B3J 3B7

46886 Bm
Rec'd - 303-330

Our file no:

MAR 28 199

March 20, 1996

Rec'd - 303-330

Mr. Mel Cappe
Deputy Minister
Environment Canada
28th Floor, 10 Wellington Street
Terrasses de la Chaudière
Hull, Québec K1A 0H3

Dear Mr. Cappe:

Enclosed please find the response of the Nova Scotia Department of the Environment to the federal government's response to the recommendations of the Standing Committee on Environment and Sustainable Development. The federal Proposal for a Renewed CEPA was circulated widely within the department for review and comment.

I wish to thank you for the opportunity to review and comment on the proposal.

Yours truly,

Wayne J. Grady
Deputy Minister

CEPA REVIEW: THE GOVERNMENT RESPONSE
Environmental Protection Legislation Designed for the Future
Proposal for a Renewed CEPA

NOVA SCOTIA DEPARTMENT OF THE ENVIRONMENT RESPONSE

THE FEDERAL ROLE IN ENVIRONMENTAL PROTECTION AND MANAGEMENT

- ▶ Nova Scotia supports strong federal leadership in the following areas:
 - environmental research and development based on the assessed needs and priorities of all jurisdictions;
 - development of national guidelines through multilateral consultation to encourage consistency in environmental management frameworks across Canada.
- ▶ Nova Scotia supports efforts, through the Canadian Council of Ministers of the Environment (CCME), to develop an Environmental Management Framework Agreement (EMFA) for Canada which clearly articulates an effective and efficient division of roles among the federal, territorial, and provincial levels of government.

GENERAL COMMENTS ON THE FEDERAL PROPOSAL FOR A RENEWED CEPA

- ▶ While the Proposal for a Renewed CEPA envisions a more streamlined federal environmental regulatory framework and uniform control over the "federal house," many of the proposed amendments would intrude upon provincial areas of responsibility. Proposed amendments would establish an expanded role for Environment Canada in program delivery. Given current efforts to reduce the size and cost of Government, it is unclear how Environment Canada could provide expanded service delivery without compromising its critical leadership role in research and guideline development. Further intrusion upon provincial jurisdiction in the absence of direct provincial participation in the renewal of CEPA would be unacceptable.
- ▶ A number of proposed amendments, particularly those related to the control of pollution and wastes, reflect work that is currently underway or encompass programs that are already in place at the provincial level.

SPECIFIC COMMENTS ON THE FEDERAL PROPOSAL FOR A RENEWED CEPA

Administration

- ▶ The federal government should clearly establish the relationship between *ad hoc* CEPA advisory committees (Proposed Action 2.1) and CCME.
- ▶ The discussion of *General Agreements for Environmental Management* should make clear reference to CCME and the EMFA.

Public Participation

- ▶ Emphasis on the right to sue and prosecution may increase the incidence of nuisance complaints and foster an adversarial climate. Right to sue and reverse onus are provisions which will have far-reaching repercussions. These provisions in the renewed CEPA should be carefully prepared.

Ecosystem Science and National Norms

- ▶ The EMFA Monitoring Schedule should be used as a guideline in defining the Minister's intent to carry out monitoring and research.
- ▶ Empowering the federal Minister of the Environment to require submission of information beyond the scope of the National Pollutant Release Inventory (NPRI) would conflict with Nova Scotia's commitment to work cooperatively with industry and encourage voluntary environmental initiatives. Broad powers to requisition information will also compromise efforts to promote environmental auditing as a standard business practice.

Enforcement

- ▶ Nova Scotia is concerned that elements of the Proposal for a Renewed CEPA aimed at establishing an expanded role for Environment Canada in enforcement and compliance will conflict with provincial areas of responsibility and augment overlap and duplication.

Pollution Prevention

- ▶ Regulatory controls covering pollution prevention and mandatory pollution prevention plans run counter to current provincial and national (CCME) efforts to promote pollution prevention as a voluntary initiative.
- ▶ Nova Scotia is working cooperatively with industry to develop and implement pollution prevention programs. Criteria for the federal Minister's powers to require pollution prevention plans should recognize cooperative initiatives at the provincial level to ensure that the federal requirement does not undermine on-going and proposed initiatives. Organizations partnering with a provincial government on pollution prevention should be exempted from any federal power to require pollution prevention plans.
- ▶ With respect to pollution prevention, a renewed CEPA should target economic sectors as opposed to individual toxic substances. A sectoral approach is more client focused.

Controlling Pollution and Wastes

- ▶ Concerning international air pollution, the Proposal for a Renewed CEPA states that it would be the federal government's intent to consult with provinces on the establishment of any framework to control domestic sources of international air pollution. It is Nova Scotia's position that provincial participation in the development of any such framework, particularly the establishment of time lines, must be ensured.
- ▶ Nova Scotia fully endorses the Voluntary Challenge and Registry initiative, and does not support a regulatory or fiscal approach to stabilizing greenhouse gas emissions at 1990 levels by the year 2000. Management of greenhouse gases must not be based on regulatory and fiscal tools.
- ▶ The development of national standards for fuels is currently underway. Fuel reformulation regulations will likely be in place before the proposed amendments to CEPA can be promulgated. It is doubtful the fuel reformulation regulations, as are currently being proposed, will be cost-effective for Nova Scotians as implied in the Proposal for a Renewed CEPA.



RECEIVED
MINISTER OF
THE ENVIRONMENT

MAR 21 11 49 AM '96

Dr. Fernando Moncayo
RR 1 Paradise, N.S.
BOS 1RO

March 21, 1996

The Hon. Sergio Marchi
Minister of the Environment
Terrasses de la Chaudière
10 Wellington St., Hull, Quebec
K1A 0H3
Fax 1-819-953-3457

OCU-DOE

139004

Dear Mr Marchi,

MAR 26 1996

Re: Regulation of Biotechnology

Reçu-UCM-MDE

I am writing to you on behalf of the Nova Scotia Organic Growers Association (NSOGA) regarding the government's proposals for the regulation of biotechnology, contained in its December 1995 response (Environmental Protection Legislation Designed for the Future) to the June 1995 Report of the House of Commons Standing Committee on Environment and Sustainable Development (It's About Our Health!)

I ask you to reject these proposals. If these proposals are adopted they will jeopardize the ability of the people of Canada to know what is being put into their food supply. They will be subject to the possible dangers that poorly-researched biotechnology products will have on their health and environment.

Mr Marchi, Canadians are deeply concerned that the large amounts of chemicals released into the environment under the premise that "it has not been proven to be harmful, so it must be safe" are responsible for the alarming increase in immune-related diseases, cancer and reproductive failure in wild life and humans. It is the people of Canada who, at the end of the day, have to pay the price for these experiments with illness and rising medical costs. Meanwhile, chemical manufacturers such as Monsanto and Elanco continue to reap profits with new rounds of "safer chemicals" and now biotechnology products.

Mr Marchi, you and the Liberal Government are personally responsible for making the decisions that will ensure the protection of the people of Canada and our environment.

I expect you to show courage and leadership in cutting the high environmental deficit we have accumulated, due to slack regulations from past administrations.

Nova Scotia Organic Growers Association

Therefore, you must fully adopt the recommendations of the Standing Committee on Environment and Sustainable Development. In addition, I suggest that a new biotechnology section should be established under CEPA.

The new CEPA biotechnology section should include the following:

- * Regulations must apply to all products of biotechnology which may enter the environment, including those which the government currently proposes to regulate under other Acts, such as the SEEDS ACT, the PEST CONTROL ACT, and the FERTILIZERS ACT.
- * Regulations must establish requirements for the assessment of biotechnology products in terms of their:
 - potential immediate or long-term, direct or indirect effects on human life and health, the environment, and biodiversity, including cumulative impacts;
 - potential effectiveness of the products for their intended purposes; and
 - the availability of alternative means of achieving product purposes which may present lower potential for harm to the environment and human health;
- * Regulations must provide for public participation in decision-making regarding biotechnology including:
 - public notice of major decisions regarding biotechnology products;
 - public notice of proposed fields tests of biotechnology products;
 - opportunities to appeal government decisions regarding biotechnology products, including the approval of field tests; and
 - enhance access to information regarding products of biotechnology;
 - establish a full cost-recovery, user pay system for approval of biotechnology products; and
 - provide for the establishment of a database of all biotechnology products released in Canada

Mr Marchi, whereas biotechnology products may not have an immediate negative effect on us, it is our children, grand children and generations to come who will suffer the negative effects of poor regulation in biotechnology.

I urge you to adopt a tough stand for the protection of the health of the people of Canada and our environment.

Thank-you for your attention.

Sincerely,

Dr. Fernando Moncayo D.V.M., M.Sc., Veter. Homeop.
President of NSOGA

nova scotia public interest research group

dalhousie university, student union building
6136 university avenue
halifax, nova scotia, B3H 4J2
phone/fax: 902 494 6662
email: nspirg@ac.dal.ca

A social justice and environmental research and action group

138917

March 18, 1998

The Honourable Sergio Marchi,
Minister of the Environment,
Terrasses de la Chaudière,
10 Wellington St.,
Hull, Québec,
K1A 0H3

REC'D-DCU-DOE

MAR 22 1998

Regu-UCM-MDE

0-1025-1

Re: Canadian Environmental Protection Act (CEPA)

Dear Mr. Marchi,

We are writing to urge you to reform CEPA to strengthen this Act in the areas of pollution prevention, regulation of toxic substances, access to information and environmental rights, and to add a new section to CEPA which would strictly regulate biotechnology products that may enter the environment.

As CEPA is Canada's primary environmental health protection law, NSPIRG-Dalhousie, the NSPIRG Food Cooperative, the Women's Health Collective, the Food Issues working group, and the Eco-Action working group urge the federal government to follow these recommendations:

- to phase out and ban the use and release of chemicals that persist in the environment and build up in wildlife, ecosystems, and humans;
- to make human health, safety and a healthy environment the priority with respect to biotechnology; and
- to implement an Environmental Bill of Rights which gives the federal government the right to intervene when the environment is in danger of being harmed and the right to sue polluters who break the law.

Sincerely,

Phyllis J. McGregor
Executive Director
on behalf of NSPIRG-Dalhousie

Nolly Reid
NSPIRG Food Cooperative

Danielle Andrews
Women's Health Collective

Kaurelle Ragkull
Food Issues Working Group

Wayne Grozsko
Eco-Action Working Group



Box 104, Uxbridge, Ontario L9P 1M6
Tel/Fax 905-852-0571 nucaware@web.apc.org

38951

March 21, 1996

Rec'd-DCU-DOE

Honourable Sergio Marchi
Minister of the Environment
Terrasses de la Chaudière
10 Wellington St.
Hull, Québec K1A 0H2

Rec'd-UCM-MDE

BY FAX -> 819-953-3457

RECEIVED
MINISTER OF
THE ENVIRONMENT
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0-1165-34
SIS
one page only
(ORIGINAL IN THE MAIL)

Re: "CEPA Review: The Government Response"

Dear Mr. Marchi,

I'm writing to you on behalf of Nuclear Awareness Project to register our support for tough laws to protect the environment and public health. We believe that the federal government should take a leadership role in environmental protection by setting tough standards to control and reduce chemically toxic, as well as radioactive pollution.

The Canadian public should have the right to know about all sources of toxic emissions. Access to information about polluters and toxic releases should be guaranteed by the government. Citizens should also have the right to intervene when the environment is being harmed through an 'Environmental Bill of Rights' type of legislation.

The bottom line is pollution prevention. Please make changes to the Canadian Environmental Protection Act that will ensure that the protection of public health and the environment comes first.

Yours Sincerely,

Irene Kock
Irene Kock

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

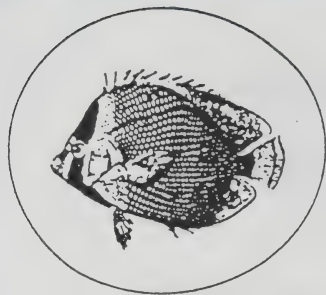
IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: DAVID O'LEARY *David O'Leary*

Address: RRI

MARGARETSVILLE NS

BUS 1M



OCEAN VOICE INTERNATIONAL

2883 Otterson Drive

Ottawa, Ontario K1V 7B2, CANADA

Phone: (613) 992-2207 Fax: (613) 521-4205

Honourable Sergio Marchi
Minister of the Environment
Terrasses de la Chaudière
10 Wellington, Hull, K1A 0H3

Rec'd-DCU-DOE

MAR 28 1996

13912

0-1025-31

March 18, 1996

Rec'd-UCM-MDE

RE: Government Response to CEPA Review

Dear Minister Sergio Marchi,

We are writing to you to show our concern about the proposals in "CEPA Review: The Government Response- Environmental Protection Legislation Designed for the Future". We are concerned that in this document, only a few recommendations outlined by the Standing Committee on Environment and Development in their report "It's About Our Health! Towards Pollution Prevention" were adequately addressed.

Rivers, winds and ocean currents do not respect provincial boundaries. Ocean Voice International believes that the federal government should take a strong leadership in environmental protection by setting strong environmental standards.

With regards to Ocean Dumping, a longer objection period should be allowed when the government grants an ocean dumping permit. Further, using the pollution prevention approach, CEPA should require ocean dumping applicants to show there are no means of avoiding the creation of the dumped waste in the first place rather than having to make efforts to recycle or treat wastes as proposed in the amendments to CEPA.

The government proposal does not mention at all what it is going to do in regards to the protection of coastal zones. Definitely, the federal government should lead in the formulation of a national coastal zone management policy, including the formulation of environmental objectives, codes of practice and legislation to preserve the quality of coastal ecosystems and to prevent land-based sources of pollution. More research and monitoring should also be carried out in coastal zones to assess the damage/recovery of these ecosystems vital to our survival.

All pollutants end up in the oceans It's just a matter of time. Consequently, to save our oceans from a slow but certain death, the use and release of chemicals that bioaccumulate and persist in the environment should be banned or phased out as quickly as possible. CEPA should also contain enforceable air standards for a variety of pollutants, since these pollutants also end up in the ocean.

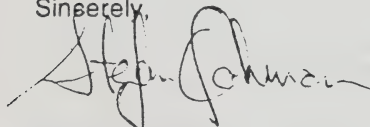


The Canadian public should have the right to know who is releasing which pollutants into the environment through comprehensive public access to information on all toxic releases to the environment, including substances recycled or incinerated.

CEPA has a very weak enforcement record. Environment Canada should be restructured to ensure a greater use of prosecutions to achieve regulatory compliance. The Canadian public should also have the right to sue polluters who break the law.

Ocean Voice International is committed to conserve the diversity of marine life and to protect and restore marine ecosystems and ecological services. Please help us achieve these goals by making the new CEPA strong. A strong CEPA is crucial to protect the environment and the health of present and future generations of all people in Canada.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Stefan Ochman', with a stylized, flowing script.

Stefan Ochman
Director and editor of Sea Wind
200 Colvilleton Trail
Nanaimo, B.C. V9R 6R1

ALAN ABELSOHN, M.D., C.C.F.P.

Family Physician
1735 Bathurst Street, #1
TORONTO, ONT., M5P 3K4
(416) 483-8111

139275

0-1025-31

March 22, 1996

The Honourable Sergio Marchi,
Minister of the Environment
Terrasses de la Chaudiere
10 Wellington St.
Hull, PQ., K1A 0H3

REC'D-DCU-DOE

APR 2 1996

REGU-UCM-MDE

Dear Sir:

I am writing to express the concerns of myself and my committee regarding your proposals to amend CEPA.

We believe that the Parliamentary Standing Committee on Environment and Sustainable Developments report "It's About Our Health/ Towards Pollution Prevention" was an excellent report and points the way for an effective CEPA. We are disappointed with your government's response.

We are particularly concerned about the human health effects of persistent organic pollutants. We join the International Joint Commission in urging that they be banned or phased out.

We believe that, as in the practice of medicine, prevention is better than cure, and hence we urge you to enact new provisions requiring all sectors to prevent the use and generation of pollutants. Attempts to control them are important, but must be seen as the second line.

We believe that access to information is essential for healthy active communities and that HPRI should be extended to include all toxic releases into the environment, including substances sent off site for recycling or incineration.

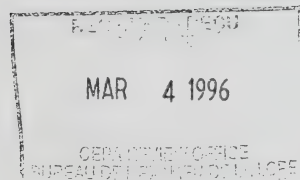
We also believe that enforcement needs to be strengthened, and to this end, we believe the public needs an Environmental Bill of Rights, which would include the right to intervene when the environment is being harmed and the right to sue polluters who break the law.

We urge the federal government to enact a strong CEPA, with a strong leadership role in environmental protection, with clear, strong environmental standards.

Alan Abelson, M.D., C.C.F.P.
Chair, Environmental Health Committee
Ontario College of Family Physicians



Ontario Corn Producers' Association



February 26, 1996

90 WOODLAWN ROAD W., GUELPH, ONTARIO N1H 1B2

TELEPHONE (519) 837-1660
FAX (519) 837-1674

CEPA Office
Environment Canada
15th Floor
Place Vincent Massey
Hull, Quebec
K1A 0H3

Dear Sir/Ma'am:

The Ontario Corn Producers' Association represents the 21,000 Ontario farmers who grow corn commercially in the province.

We have reviewed the Report of the Standing Committee on Environment and Sustainable Development, entitled *It's about our health: Towards Pollution Prevention: CEPA Revisited*, tabled in June 1995, and the response by the Government of Canada, entitled, *Environmental Protection Legislation Designed for the Future - A Renewed CEPA: A Proposal*, tabled in the House of Commons on December 14, 1995.

We agree strongly with the Government of Canada position that CEPA should not duplicate regulatory functions already performed under other acts. In particular, we support the wording of section 7.4 that CEPA should play no role in the regulation of products of biotechnology where such regulation already occurs under existing legislation. The latter includes the *Seeds Act*, *Fertilizer Act*, *Pest Control Products Act*, *Health of Animals Act*, and the *Food and Drugs Act*.

It is important that the Government of Canada not take steps to unduly impede the Canadian development and usage of new biotechnology technology designed to improve food products, improve environmental integrity, and improve the competitiveness of the Canadian agri-food industry.

In addition, CEPA and Environment Canada should not duplicate pesticide regulatory functions now transferred to the new Pest Management Regulatory Agency of Health Canada.

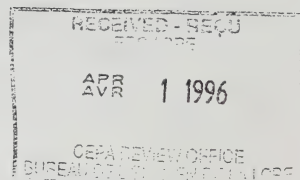
Sincerely,

Jim Johnson
President

O. Allan Kupcis, President & CEO

March 19, 1996

Ms. Ruth Wherry
Director, CEPA Office
Environmental Protection Service
Environment Canada
Ottawa, Ontario
K1A 0H3



Dear Ms. Wherry:

Canadian Environmental Protection Act (CEPA) Review: The Government Response

We have reviewed the Government response to the recent CEPA Review and are generally encouraged by the proactive approach taken to the proposed revisions to the Act. We are very supportive of the Guiding Principles offered for CEPA, and most notably pollution prevention and the precautionary approach, as a means of advancing progress on sustainable development. We do, however, suggest that it is desirable to get multi-stakeholder consensus on these principles, to inspire industry to achieve rapid progress on pollution prevention and sustainable development. Many of these principles have already been embraced by Ontario Hydro through its sustainable energy development policy and principles and its supporting strategies. Accordingly, we feel that our commitment and advances in sustainable development will prepare us well for the revised CEPA. Nevertheless, we do have some general and specific concerns that we would like to raise for your consideration.

Firstly, at a broad level, we do have some concern about the speed at which industry is expected to respond to the revised CEPA. Whereas we are supportive of the changes in general, trying to address all of the new initiatives simultaneously could become overwhelming, economically punitive and perhaps elicit failure. The establishment of realistic priorities with implementation phased over a reasonable time frame will better prepare ourselves, and industry in general, for achieving the intent of the Act.

Secondly, harmonization of the CEPA provisions with comparable areas in Provincial jurisdictions is critical for industry to effectively respond in an efficient and cost-effective manner. We would encourage the elimination of any unnecessary duplication between jurisdictions, perhaps through more extensive use of equivalency agreements. We would also support increased efforts to harmonize international regulatory requirements, particularly those between Canada and the U.S.

Ms. Ruth Wherry - 2

March 19, 1996

Thirdly, while we agree with the precautionary principle, particularly where irreversible and long-term effects are anticipated, we strongly support the recommendation that scientifically-based risk assessment, based upon substance toxicity (hazard) and exposure or dose, continue to be used as the predominant basis for defining substances as toxic (Chapter 9).

Our fourth broad concern relates to proposed management of radionuclides under CEPA, particularly those used by the nuclear industry. The nuclear industry is already adequately regulated under the Atomic Energy Control Act and the Nuclear Liability Act on this issue. Ontario Hydro works diligently to meet or exceed all requirements. We see no reason to duplicate regulation of radionuclide management under CEPA (see chapter 10: Government Operations, Federal Lands and Aboriginal Lands). In the interest of efficiency and streamlining regulations, we strongly urge that the environmental management of the nuclear industry remain outside of the auspices of CEPA.

The remaining comments are of a more specific nature and are directed at specific chapters of the revised CEPA.

Chapter 1: Guiding Principles

Whereas we fully support both the "ecosystem approach" and "biodiversity conservation", we feel that there is merit in leaving reference to these concepts in the preamble to the Act rather than having them imbedded within the Act. Our concern is not in addressing, or making progress on these issues, but rather, forcing a premature legalistic definition which may constrain the evolutionary development and implementation of these concepts.

Chapter 2: Administration

Equivalency and Administrative Agreements: We are very supportive of "equivalency agreements" (2.5) and would like to see these vigorously pursued. As regards the sunset provisions (2.9), we suggest that it would be preferable to have a government policy to review any such agreements within a specified time frame. This would avoid any problems associated with a regulatory gap should a sunsetted agreement not be superseded by another agreement.

Economic Instruments (2.13): Once again, we are very supportive of the use of economic instruments, especially industry incentive based programs, for achieving environmental protection and would encourage the Government to pursue this option.

Non-regulatory Approaches to Environmental Protection (2.14): We are very supportive of this approach and accordingly, would favour the expansion of such an approach to include Track 2 substances.

Chapter 4: Ecosystem Science and National Norms

Submission of Information for Research and Publication (4.2): We understand the need for the Minister of the Environment to have information gathering powers that are not limited to the National Pollutant Release Inventory, however; we are concerned that the information gathering process could be a costly burden to industry. We want to encourage cost-effectiveness, efficiency and the elimination of any duplication in data collection requirements.

Chapter 5: Enforcement

Administrative Monetary Penalties and Negotiated Settlements: We support the use of administrative monetary penalties (5.1), provided the accused can resort to an appeal in the courts. We believe that any negotiated settlements, which are successful in achieving compliance, should be immune from any further prosecution provisions built into the Act (5.4).

Ticketing (5.6): Under ticketing types of offenses, we would like to continue to see the opportunity for access to the defense of due diligence.

Court Orders: While we recognize that Government has the right to publicize its victory in the media, we would counsel the Government not to force violators to publish formal apologies (5.13). We also recommend that any awards granted through the courts would not be in addition to fines imposed, but rather, a substitutional measure (5.14).

Chapter 6: Pollution Prevention

Site Identification and Registration (6.16): We are concerned that this could become an onerous administrative task. If it is to be implemented, we believe that reasonableness would prevail and that thresholds for hazard and quantities be sufficiently high to make the requirement both useful and practical.

Reporting of Spills, Leaks and Other such Incidents (6.17) We strongly encourage discussions on the development of a national spill-reporting network. Streamlining reporting procedures is highly desirable

Chapter 8: Controlling Pollution and Wastes

International Air Pollution (8.1): We are strongly supportive of your suggestions and the use of economic instruments as tools to control and reduce transboundary air pollution.

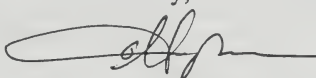
Ms. Ruth Wherry - 4

March 19, 1996

Interprovincial/Territorial Movements of Hazardous Wastes (8.20): We have concerns about two Acts (CEPA and TDGA 1992) having authority on the same issue. In the interests of efficiency and the desire to eliminate redundancy, we would prefer that the requirement for wastes manifests remain in one piece of legislation; perhaps the existing Transportation of Dangerous Goods Act (TDGA).

In summary, we are supportive of the Government Review of CEPA and have embraced a very similar approach to environmental protection for our own organization. Our comments are intended to enhance the efficiency and the practicality by which CEPA can be embraced by industry. We would be happy to discuss our comments and concerns with your staff.

Sincerely,



O.A. Kupcis
President & CEO

c: The Honourable Anne McLellan
The Honourable John Manley
The Honourable Diane Marleau
The Honourable Brenda Elliott
Mr. W.A. Farlinger
Distribution (see attached list)

FROM:

The Ontario Institute for Studies in Education
252 Bloor Street West, Toronto, Ontario M5S 1V6

Department of Adult Education

Institut d'études pédagogiques de l'Ontario
252, rue Bloor Ouest, Toronto (Ontario) M5S 1V6

MAR 18 1996

ENVIRONNEMENT CANADA
100-1000

Angela Miles

To: Prime Minister Jean Chretien 613-991-6700

To: Environment Minister Sergio Marchi 1-819-953-3450

Date: March 16, 1996

38882

Re: Canadian Environment Protection Act

Rec'd - DCU - DOE

MILE

Rec'd - UCM - MDE

I am writing briefly to urge you to not only maintain but enhance the federal government's commitment to protect an environment. Your proposed weakening of this role is, at the same time, a weakening of the raison d'être & support ^{for} understanding of the Canadian federal government's role by the people of Canada.

We need new kinds of industry production focused on people's ^{real} needs & compatible with protection & enhancement of the environment. On the long run, only this kind of shift will ensure healthy communities & a competitive economy, in fact, the future of the planet. You surely must know this - at least as human beings, if not as government leaders.

Failure to act as your responsibility to halt environmental damage now, threatens the health & well being of the Canadian population now & undermines the possibility of this necessary shift ⁱⁿ ~~in~~ ^{to} forms & content of production. It is criminally shortsighted.

TEL (416) 923-6641

FAX (416) 926-4723

Affiliated with the University of Toronto / Affilié à l'Université de Toronto

Sincerely, Angela Miles, Professor



THE ONTARIO SEED CORN GROWERS' MARKETING BOARD

785 St. Clair Street, CHATHAM, ONTARIO N7M 5J7
PHONE (519) 352-6710 • FAX (519) 352-0526

March 12, 1996

Rec'd-DCU-DOE

MAR 15 1996

Reçu-UCM-MDE

13876A

0-1025-1

CEPA Office
Environment Canada
15th Floor
Place Vincent Massey
Hull, Quebec
K1A 0H3

Dear Sir/Madam:

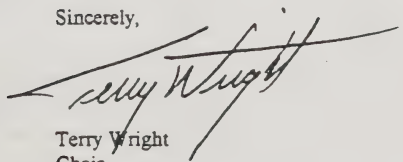
The Ontario Seed Corn Growers' Marketing Board represents over 500 Ontario farmers who produce seed corn in southwestern Ontario.

We are writing in regards to the response by the Government of Canada to the Standing Committee on Environment and Sustainable Development, *Environmental Protection Legislation Designed for the Future*, tabled in the House of Commons on December 14, 1995. We are in full support of the Government of Canada position that CEPA should not duplicate regulatory functions already performed under other acts. It is our feeling that the CEPA should not duplicate the regulation of products of biotechnology where such regulations already occur under existing legislation. These regulations include the *Seeds Act*, *Fertilizer Act*, *Pest Control Products Act*, *Health of Animals Act* and the *Food and Drug Act*.

In a time of financial restraint it would be irresponsible to develop a new layer of duplication. It is also important the unnecessary red tape not be initiated that would adversely effect the Canadian development and use of new biotechnology designed to improve food production, environmental integrity and the competitiveness of the Canadian agri-food industry.

We would also like to stress that CEPA and Environment Canada should not duplicate pesticide regulatory functions now transferred to the new Pest Management Regulatory Agency of Health Canada.

Sincerely,


Terry Wright
Chair

cc: Honourable David Dingwall
Honourable Sergio Marchi
Honourable Ralph Goodale
Honourable Brenda Elliott
Honourable Noble Villeneuve
Jerry Pickard
OCPA



138921

160 St. David Street S., Fergus, Ontario N1M 2L3
Phone: 1-519-STREAMS (787-3267)

March 18, 1996

Rec'd-DCU-DOE

The Honourable Sergio Marchi
Minister of the Environment
Government of Canada
10 Wellington Street
Hull PQ K1A 0H3

MAR 23 1996

Regu-UCM-MDE

0-1025-1

sent by fax to: 819-953-3457

Dear Minister:

In response to my expressed concerns, your predecessor, the Hon. Sheila Copps forwarded to me the Government Response, a Proposal for a Renewed CEPA, tabled on December 14th.

Having studied it, I have serious concerns. It seems to be a very substantial step backward from the recommendations made in the report of the Standing Committee. It is clearly not a strong enough framework to take us with any degree of confidence into the next century.

There is no provision for the Canadian Government to exercise leadership, at a time when every serious environmental thinker on the planet is stressing the need to exert influence (even simple moral influence) across geo-political boundaries.) Of course we recognize that in the frequently turbulent negotiations your government must conduct with the various Provinces the issue of jurisdiction in environmental affairs is controversial, but for goodness sake we must, as a country, have a National Policy which is consistent with global as well as domestic realities.

There is no sign that the Government has recognized, even this late in the debate, that the *apparent economic 'sense'* of relaxing environmental standards in the name of creating "a healthier environment for industry", is in fact a recipe for long-term *economic ruin*.

I wish to record my organization's strong opposition to the new CEPA as drafted. Thank you.

Yours sincerely,

David Calderisi
Chair

"Working together for the best solution
to Ontario's toxic waste problem"

ONTARIO TOXIC WASTE RESEARCH COALITION, BOX 35
VINELAND STATION, ONTARIO L0R 2E0

Rec'd-DCU-DOE

38906

March 14, 1996

MAR 22 1996

Reçu-UCM-MDE

0-1025-1

The Honourable Sergio Marchi,
Minister of the Environment,
10 Wellington St.,
Ottawa, ON
K1A 0H3

Dear Mr. Marchi,

Our organization is very concerned that environmental protection laws and the health of Canadians are in danger of being eroded by your government's proposed reforms to the Canadian Environmental Protection Act (CEPA).

Your proposals fail to adequately strengthen the Act in the areas of pollution prevention, regulation of toxic substances, access to information and environmental rights. In the area of biotechnology and international air pollution, your government's proposals actually threaten to weaken the very laws that the review process sets out to strengthen!

We are asking you to take a strong leadership role in environmental protection by setting strong environmental standards. The use and release of chemicals that persist in the environment and build up in wildlife and humans should be banned or phased out, since neither humans nor the environment can tolerate these substances.

The Canadian public needs an Environmental Bill of Rights, which includes the right to intervene when the environment is being harmed and the right to sue polluters who break the law. They should also have the right to know who is releasing which pollutants into the environment through comprehensive public access to information that includes all toxic releases to the environment, including substances sent off-site for recycling or incineration.

The protection of human health, safety and the environment should be the priority of your government in the regulation of biotechnology. A new section should be added to CEPA, to be administered by Health Canada and Environment Canada, which applies to all biotechnology products which may enter the environment. New provisions must be enacted to require all sectors of society to prevent the use and generation of pollutants rather than to control them.

We urge your government to seriously consider the points outlined above in this letter.

Yours truly,

Ruth Burton

Ruth Burton,
Secretary



ONTARIO

WASTE MANAGEMENT ASSOCIATION

4195 Dundas St. W., Suite 320
Etobicoke, Ontario M8X 1Y4
416/236-0172
Fax: 416/236-0174

March 20, 1996

The Hon. Sergio Marchi,
Minister of the Environment,
Terrasses de la Chaudière, 28th Floor,
10 Wellington Street,
Hull, Quebec
K1A 0H3

MAR 22 1996

CEPA REVIEW: THE GOVERNMENT RESPONSE
RECEIVED: 1996 MAR 22 10:55

RE: OWMA Comments on "CEPA Review: The Government Response"

Dear Minister:

We are pleased to have the opportunity to submit our comments on the government's response to the CEPA Review document. We acknowledge the effort required by the Standing Committee to produce its Report. We are also cognizant of the government's interest in the issues, given the comprehensiveness of its response to the Committee's report. We particularly recognize Canada's responsibilities under the Basel Convention.

The Ontario Waste Management Association is a unique association that represents the waste management sub-sector of the private sector environmental service companies in Canada. Many of our members do business across Canada and around the world and rely on the OWMA to represent their interests to both federal and provincial governments.

The majority of both hazardous and non-hazardous wastes and recyclables that cross the Canada-US border in either direction do so at points in Ontario and involve our members' companies. Hence, we have a specific interest in and will restrict our comments to parts of *Chapter 8 - Controlling Pollution and Wastes*.

Authority to Ban Exports and Imports (8.16; 8.19)

We submit that, while it is in the public interest for the government to have authority to prohibit the import and/or export of waste and recyclables, such new authority should not take precedence over the provisions of the Canada-US Agreement on the Transboundary Movement of Hazardous Wastes. If shipments between Canada and the United States conform to the provisions of this Agreement, then no new authority to ban such shipments should be granted under CEPA. The Agreement stipulates the requirements for such international shipments. Failure to meet these stipulated requirements should be the only

trigger to disallow these shipments. That, in OWMA's view, provides the government with sufficient regulatory control.

Therefore, it should be explicit in CEPA that any new authority that enables the Government of Canada to ban the importation or the exportation of either hazardous or non-hazardous wastes should apply only where there is no international agreement to which Canada is a party that specifically prescribes the conditions for the international shipments of these types of wastes.

New Controls for Exports and Imports of Non-Hazardous Solid Wastes (8.18)

By their very nature, non-hazardous solid wastes and recyclables are less threatening to the environment than are hazardous wastes. Because the environmental threat is less, it follows that the regulatory controls on solid non-hazardous wastes and recyclables should be less rigorous than those for hazardous wastes.

In the case of the international movement of non-hazardous solid wastes and recyclables, prior notification and approval of shipments should not be required. Through the use of advanced technology, such as electronic bar codes and laser scanning, an up-to-date inventory of wastes crossing the border can be generated from customs manifests. This information could include the names of the shipper, the carrier and the receiver of the waste which should be sufficient information for the Government of Canada. Once collected, the information can be electronically cross referenced with provincial/state records to ensure that all parties are appropriately licensed and permitted by their respective regulatory authorities to generate, transport or receive the materials.

An annual report could be produced and circulated for comments to the major import/export parties to ensure the collected data is accurate and reliable. Once finalized, the report can be shared electronically between appropriate government or private sector agencies.

Adopting measures which establish a lesser level of regulatory control for solid non-hazardous wastes and recyclables and using advanced technology to monitor their movements would benefit both the government and the waste industry. This approach would guarantee government(s) access to the information needed while

not posing any significant barriers to well established international trade that currently exists. Neither would it unreasonably increase the burden of regulatory compliance.

Practical Considerations

Some of the solutions proposed for the disposal of the non-hazardous solid waste residues generated within Metropolitan Toronto are predicated on there being continuing access to American disposal facilities that are specifically permitted to accept Canadian waste(s). The municipal governments where these facilities are located have entered into "willing host" agreements, signifying their intent to willingly accept Canadian waste into their communities. It would have a severe adverse economic impact on the citizens in the Greater Metropolitan Toronto area if their ability to entertain these innovative international disposal options was thwarted by new federal government regulations.

Maintaining access to properly licensed US facilities is a key element in the waste and recyclables management planning process for many Ontario communities and businesses.

It is also possible that, in the future, communities in the United States will look to Canadian disposal facilities for their waste management needs. An open border is equally important in this scenario.

Costs and Liabilities (8.21; 8.22)

These new cost recovery authorities should not be construed as new revenue streams for the federal government. Any future fees charged to process applications, notices and other documents connected with the export or import of any wastes or recyclables must be established on a "true cost" basis, reflective of the extent and nature of the service. The fees cannot be excessive.

It also follows that all documents must be processed in a timely fashion. The efficiency of the service provided must be reflective of the fees charged.

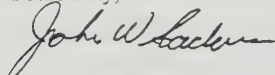
Conclusions

As your government sets out to enact new legislation concerning international waste and recyclables movements, we encourage you to recognise explicitly the importance of separate bilateral agreements that already exist that address these issues. We also urge you to be mindful of the flourishing trade involving transborder shipments of hazardous and non-hazardous waste and recyclables that exists today. (Actually, these "wastes" are considered to be "commodities" by the waste management industry.)

Finally, OWMAs is pleased to offer any assistance necessary to your Ministry staff in the development of a waste-tracking and regulatory enforcement mechanism.

We appreciate the opportunity to express our views. We would be pleased to meet with you and/or your officials to elaborate on any points made herein.

Yours truly,



John W. Sanderson
President

c.c. The CEPA Office
 Hon. Lloyd Axworthy, Minister of Foreign Affairs
 Hon. Arthur Eggleton, Minister for International Trade
 Hon. Brenda Elliott, Ontario Minister of Environment & Energy
 Hon. John Manley, Minister of Industry
 Hon. Anne McLellan, Minister of Natural Resources
 Ms. Marjorie Loveys, PMO
 Mr. Mel Cappe, Deputy Minister, Environment Canada
 Messrs. V. Shantora, G. Cornwall, J. Myslicki, Environment Canada

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: W R Brown

Address: 135 Mellow Ave

Jefferson Sub / Div. Kingston NS
BOP 1R0

DEAR HONOURABLE

MAIL POSTAGE
Canada Post Corporation
090 753 2771 960309
06372949

PREJUDICE of the Liberal Government's
Committee's report on the Canada
(CEPA), Revisited.

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Save Trees. Reuse Envelopes

HON. SERGIO MARCHI,
MINISTER OF ENVIRONMENT,
HOUSE OF COMMONS,
OTTAWA,
ONTARIO K1A 0A6
ECOLOGU NORTH

DEMAND that my government press
my heart and the environment by ac
as written in the Standing Committee

IT'S ABOUT OUR
TOWARDS POLLUTIC

Name

Chris O'Brien

Address

7-1200 GIZEL

LOWKNIFE

NT XIA 2C6

Mr Chris O'Brien
107-1200 Gizel St
Yellowknife NT X1A 2C6

Rec'd-DCU-DOE

MAR 18 1996

Regu LCM-MDE

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd - DOU - 502

MAR 25 1996

Recu - UCM - MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Charity Paddison

Address: 15143 Route #1 Wilmet

Nova Scotia.

Charity Paddison

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

REC'D-DOU-DOE

MAR 25 1996

Regu-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Dean Palmer

Address: 124 #2

St. Eugene, Ont

KOB 1P0

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

DOU-DOU-DOU
MAY 25 1988
DOU-DOU-DOU



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

CHARLES A PALMER

Address:

RD #2

ST. EUGENE ON KOBIB

Charles A. Palmer

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd - DCU - DOE

MAR 25 1996

Rec'd - UCM - MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Irene Palmer

Address: P.R. # 2

St Eugene Ontario

KOB IPO

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd-DCU-DOE

MAR 25 1996

Regu-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

March 25

Address:

PK # 2 St Eugene

cont PKR-115

March 25

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Maurice Paray

Address:

Box 59

Bear River N.S. B0S 1B0

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

R D Pardy

Address:

Box 59 BEAR RIVER ROS 1B0

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd - DCU - DOE

MAR 25 1998

Regu - UCM - MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Theo PARRY.

Address:

Box 59 Bear River N.S. B0S 1B0

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd - DCU - DOE

MAR 21 1998

Rec'd - UCM - MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: [Signature]

Address: Box 100, 100 St. John St., 100 St. John St.

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd-DCU-DOE

MAR 25 1986

Requ-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

John H. Paull

Address:

18 Oakland Drive, P.O. Box 237
Middleton, Nova Scotia
B0S 1P0

Honourable Sergio Marchi,
Minister of the Environment,
Terrasses de la Chaudière,
10 Wellington St.,
Hull, PQ

RECEIVED
MINISTER OF
THE ENVIRONMENT

MAR 22 10 45 AM '96

139245

0-1021-24/E8

0-1025-1

Dear Mr. Marchi,

Our Federal Government must set strong environmental standards to protect the environment and human health. The use of chemicals that are persistent in the environment and are toxic must be banned.

We need a strong Environmental Bill of Rights to protect the earth and bring polluters to justice.

We need a public information network to inform us, the public regarding toxins released into the environment as well as information on substances sent for recycling and incineration.

Biotechnology must be entered into the Canadian Environmental Protection Act (CEPA), and protection of human health and the environment must be a priority in the regulation of biotechnology.

New provisions must be enacted to require all sectors of society to prevent the use and generation of pollutants rather than to control them.

Thank you.

Sincerely on behalf of the Pesticide Action Group,



Clover Woods

Rec'd-DCU-DOE

APR 8 1996

Regu-UCM-MDE

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

MAR 23 1994
Regu-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Heather Pettipas

Address:

11 Reathy Ave

Lr. Sackville, N.S.

B4C 2L4

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd-DCU-DOE
MAR 25 1996
Regu-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Sergio Marchi

Address:

P.O. Box 1403

Fredericton, N.S.

B0S 1P0

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd DCU-DOE

MAR 22 1995

REC'D LCM-DOE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Vincent Poiré

Address:

R.R. #1

Aylesford, Nova Scotia

BOP LCO



BRUCE PENINSULA
ENVIRONMENT GROUP

c/o James Molner
P.O. Box 196
Lion's Head, Ont.
phone (519) 795-7725 • FAX (519) 793-4412

NOH 1W0

March 21, 1996

The Hon. Sergio Marchi, Minister of the Environment

10 Wellington St.,

Hull, P.Q.

K1A 0H3

Dear Minister Marchi,

On behalf of the members of the Bruce Peninsula Environment Group I am writing to you regarding the regulation of biotechnology contained in its Dec. 1995 response (Environmental Protection Legislation Designed for the Future) to the June 1995 report of the House of Commons Standing Committee on Environment and Sustainable Development (It's About Our Health!)

We are greatly concerned that the government's proposal would significantly weaken the provisions of the existing Act as they apply to biotechnology. The minimum standards for notification and assessment of toxicity for all products of biotechnology currently provided for by CEPA would be eliminated.

This proposal is inconsistent with the intent of the Standing Committee's recommendations regarding the regulation of biotechnology under CEPA, and could endanger the health, safety and environment of Canadians. *It must be rejected.*

- Rather, consistent with the intent of the Standing Committee's recommendations, a new biotechnology part should be established under the CEPA. The new CEPA biotechnology part should:
- * apply to all products of biotechnology which may enter the environment, including those which the government currently proposes to regulate under other Acts, such as the *Seeds Act*, the *Pest Control Products Act*, and the *Fertilizers Act*.
 - * establish requirements for the assessment of biotechnology products in terms of their:
 - * potential immediate or long-term, direct or indirect effects on human life and health, the environment, and biodiversity, including cumulative impacts;
 - * potential effectiveness of the products for their intended purposes; and
 - * the availability of alternative means of achieving products purposes which may present lower potential for harm to the environment and human health.
 - * provide for public participation in decision-making regarding biotechnology products, including:
 - * public notice of major decisions regarding biotechnology products;
 - * public notice of proposed field tests of biotechnology products;
 - * opportunities to appeal government decisions regarding biotechnology products, including the approval of field tests; and
 - * enhanced access to information regarding products of biotechnology;
 - * establish a full-cost recovery, user-pay system for approvals of biotechnology products; and
 - * provide for the establishment of a database of environmental releases of products of biotechnology in Canada.

Our membership strongly urges the government to phase out and ban the use and release of chemicals that persist in the environment build up in humans and wildlife. We also urge the government to take a strong leadership role by setting strong and enforceable environmental standards.

Sincerely,

S. Poulton, chair



100% unbleached
recycled paper

P.O.W.E.R.

PROTECT OUR WATER & ENVIRONMENTAL RESOURCES

RECEIVED
MINISTER OF
THE ENVIRONMENT

P.O. Box 274, Acton, Ontario, L7J 2M4

MAR 22 3 26 PM '96



March 20, 1996.

The Honourable Sergio Marchi
Minister of the Environment
Terrasses de la Chaudiere
10 Wellington St.,
Hull, PQ, K1A 0H3
FAX: 819-953-3457

Rec'd-DCU-DOE

MAR 27 1996

Rec'd-UCM-MDE

0-1025-/
0-1165-36/5

139071

RE: CEPA Review: The Government Response - Environmental Protection
Legislation Designed for the Future - A Renewed CEPA (A Proposal)

Dear Mr. Marchi,

P.O.W.E.R. is an incorporated, non-profit, citizen's group based in Halton Hills, Ontario. Since 1987 we have been active in blocking an inappropriate, landfill proposal for a dump in a Niagara Escarpment Quarry. The Niagara Escarpment was named a Biosphere Reserve by the United Nations in 1990. We have held conferences, worked for waste reduction, provided speakers for schools as well as working for the protection of the Niagara Escarpment. We were accredited and sent a delegate to the UN Earth Summit in Brazil.

As citizens of Canada, we are appalled at the proposed changes to CEPA! There was a great deal of work done through the Parliamentary Standing Committee on Environment and Sustainable Development. Over 50 environment, labour and health organizations endorsed and submitted, The Canadian Environmental Protection Act: An Agenda for Reform to that committee. Most groups participated in the cross-Canada public hearings.

The report, It's About Our Health! Towards Pollution Prevention outlined 141 recommendations on how to reform and improve CEPA. Only a handful of the 141 recommendations were adequately addressed. The rest were ignored or rejected in the government response. HELP!! No small wonder that citizens are cynical about government. The consultation looked good but all the substance has been ripped out by interests lobbying your government. Your first interest should be in protecting ordinary Canadian citizens from having to exist in a damaged environment.

RECOMMENDATIONS:

- The federal government should take a strong leadership role in environmental protection by setting strong environmental standards.

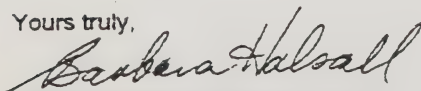
Let Canada lead the way. If Canada's environmental rules are more strict than other jurisdictions, this forces the development of solutions, products and technology that we can market around the world. It is only a matter of time before all countries will be seeking the most environmentally sound methods. **LET'S MAKE CANADA COMPETITIVE.**

- The use and release of chemicals that persist in the environment and build up in wildlife and humans should be banned or phased out, since neither humans nor the environment can tolerate these substances.
- The citizens of Canada need an Environmental Bill of Rights, which includes the right to sue polluters who break the law and the right to intervene when the environment is being harmed.
- Canadian citizens should have the right to know who is releasing which pollutants into the environment through comprehensive public access to information that includes ALL toxic releases to the environment, including substances sent off-site for recycling or incineration.
- The protection of human health, safety and the environment should be the priority of the government in the regulation of biotechnology. A new section should be added to CEPA, to be administered by Health Canada and Environment Canada, which applies to all biotechnology products which may enter the environment. Agriculture Canada cannot both promote and police biotechnology at the same time. This is a very dangerous conflict of interest that will not protect and serve the interests of the public. **ALL BIOTECHNOLOGY PRODUCTS MUST BE LABELED AS SUCH!!!**
- New provisions must be enacted to require all sectors of society to prevent the use and generation of pollutants rather than to control them.

With provincial governments like the one in Ontario intent on pursuing a business agenda at the expense of the environment it is more important than ever for the federal government to set standards for the country to protect our citizens. Do not allow NAFTA and other considerations to jeopardize our health and safety.

I will call your office to see what action you have taken on this matter.

Yours truly,



Barbara Halsall Past President of P.O.W.E.R.

cc. The Right Honourable Jean Chretien
Julian Reed MP

Rec'd-DCU-DOE

MAR 12 1996

Regu-UCM-MDE

0-1003
0-1165-36/SIS

138654

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

K w Pringle

Address:

RR # 2 ROBERTA. WEST BAY N.S
-BOE3KO

K. W. PRINGLE

Dear Honourable Sergio Marchi:

I am a Canadian who wants to stop all toxic pollutants from entering our air, soil, and water.

The Liberal Party committed itself in its policy statements outlined in the 'Red Book' "to make pollution prevention a national goal and to strengthen the enforcement of federal pollution standards". The government response to the Standing Committee's Report on the CEPA Revisited falls far short of accomplishing this. Major disappointments include

the failure to:

- ▶ legislate the phase out of all toxic chemicals
- ▶ require industry to develop plans to avoid the use of toxic chemicals
- ▶ regulate biotechnology and legislate the mandatory labelling of it's products
- ▶ give citizens public participation and effective rights to sue polluters who break environmental laws
- ▶ implement strong measures to protect biodiversity

For real sustainable development to work, uncompromising commitment must be made through the CEPA to ensure that we protect our environment and the biodiversity of our planet.

John S. Prosper *Pictou Harbour*
Just Nation

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd-DCU-DOE

MAR 25 1996

Regu-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

CHRIS

Name:

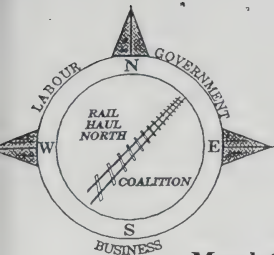
Chris Prosser

Address:

533 Vault Rd

Kingston NS.

Bop RD

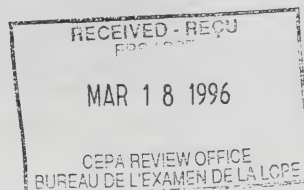


RAIL HAUL NORTH COALITION

P.O. BOX 360 NORTH BAY ONTARIO P1B 8H8 (705) 474-0400

March 12, 1996

**CEPA Office
Environment Canada
15th Floor, Place Vincent Massey
HULL, Quebec
K1A 0H3**



**RE: Government Response to Standing Committee Recommendations
ENVIRONMENTAL PROTECTION LEGISLATION
DESIGNED FOR THE FUTURE - A RENEWED CEPA**

To the Director:

The intent of this document is to respond to the proposed changes to the Canadian Environmental Protection Act (CEPA) and to the Government response to the recommendations of the Standing Committee on Environment and Sustainable Development with regard to the legislation. The report was tabled in the House of Commons on December 14, 1995.

This document makes representation with respect to the proposed changes to CEPA. **Section 8, Sub-Sections 8.18 and 8.19**, the control and/or ban of imports and exports of non-hazardous solid wastes are of specific interest.

RAIL HAUL NORTH COALITION fully supports the implementation of the renewed legislation and its proposed changes which would control, regulate or ban the shipment of non-hazardous solid waste to the United States.

Rail Haul North Coalition is a strong coalition, formed in 1991, comprising business, municipal government and unionized labour. A northern Ontario based group with representation from the City of North Bay, business interests represented by the Chamber of Commerce and designates of the sixteen (16) railway unions representing workers of the Ontario Northland Transportation Commission, a Provincial Crown Corporation.

The support of the Coalition is based on Ontario's need to create new jobs in Ontario and the more primary need of maintaining existing employment in the waste management industry with its many disciplines and in related support services to that industry.

The decision by the council of the Municipality of Metropolitan Toronto to relinquish their option for public ownership and control of municipal waste disposal has effectively turned a billion dollar opportunity over to the private sector. The potential contract includes the export of over 30 million tonnes of non-hazardous MSW over a 20 year period, a contract values at more than \$1.5 Billion Dollars.

The only opportunity to keep this industry in Canada, and more specifically in the Province of Ontario, is the Adams Mine Project, a site located in northeastern Ontario. It is the only waste management system with a landfill of sufficient capacity to service the Metro/GTA contract for disposal. Any other alternatives for a project of this magnitude would be locations in the United States.

This "in-Ontario" waste contract and its supporting services means billions of dollars in revenues to the Province and to the Canadian economy. Billions of dollars in revenue translates into job creation and sustainable employment, a key goal of both the Provincial and Federal Governments.

Unrestricted movement of non-hazardous waste will affect thousands of jobs in countless areas of the environmental services industry, the transportation industry, the engineering and waste management industries. Northeastern Ontario citizens will be directly affected because the only "in-Ontario" option for this waste management contract is in their region.

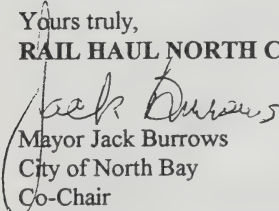
Allowing the export of non-hazardous wastes to disposal sites outside of Canada will result in serious negative financial impacts to the Province. These impacts must be evaluated by the Government especially when the export of waste means the export of revenue and jobs, direct and indirectly related to one of the largest industries in Ontario.

Canada needs job creation, the Provinces need job creation, northern Ontario needs job creation and employment stability. The Rail Haul North Coalition cares about good citizenship, good regulations for Canada and Ontario. To get economic benefit, plus job creation as a result, is a win/win scenario. We want to live here, but we need to work here. Although we are committed to ensuring the safety of our environment, if government regulations and controls make a project environmentally sound and cost effective, with benefits to the region involved, that project should happen.


RAIL HAUL NORTH COALITION encourages the Government of Canada to implement the recommended revisions to CEPA which will institute new controls restricting cross-border shipping of non-hazardous solid waste. This is responsible government, ensuring that export of MSW will not create negative economic impacts in the Province while encouraging investment and growth in Canada.

Yours truly,

RAIL HAUL NORTH COALITION



Mayor Jack Burrows
City of North Bay
Co-Chair



Richard Paulin
BMW
Co-Chair

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd-DCU-DOE
MAR 22 1996
F222-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

J. Gordon Peir

Address:

Box 102

Lawrenceville N.S.

BOS-1MO

RECEIVED
MINISTER OF
THE ENVIRONMENT

MAR 21 2 17 PM '96

Rec'd-DCU-DOE

MAR 25 1996

Requ-UCM-MDE

Resident.

391 Sawmill Rd

RR #1

St. Catharines

Ontario L2R 6P7

MAR 21/96

0-1025-1

0-1165-36/SIS

38976

Dear Mr. Marchi,

I write

regarding your proposed reforms
to the Canadian Environmental Protection
Act.

We must have stronger environmental
standards in Canada. Some of your
proposals will do the reverse!

Chemicals that build up in
our air soil water, wild life, domestic
animals; food plants and ourselves
MUST be banned BEFORE it's too

late. We have ample evidence of the relationship between chemicals and diseases.

Enact an Environmental Bill of Rights. We must know who is polluting with what substances and have access to information on recycling & incineration. We must be empowered to stop the destruction of our environment & polluters must be sued.

All future sources of pollution should be prevented before their production - by law.



RECEIVED
MINISTER OF
THE ENVIRONMENT

MAR 21 9 07 AM '96

P.O. Box 1061
Smiths Falls,
Ont. K7A 5A5

REAL is a
non-profit volunteer
organization.

Rideau Environmental Action League

March 20, 1996

The Hon. Sergio Marchi
Minister of the Environment
Terrasses de la Chaudiere
10 Wellington Street
Hull, PQ, K1A 0H3, Fax: 819-953-3457

Rec'd-DCU-DOE

38940

MAR 22 1996

Regu-UCM-MDE

0-1025-1
0-1105-36/S157

Dear Mr. Marchi,

Re: Proposed Reforms to CEPA

We wish to express our concern over the inadequacy of proposed changes to the Canadian Environmental Protection Act (CEPA). Why has the federal government not addressed *more* of the 141 recommendations made by the Standing Committee, many of which were supported by the environmental community?

The Canadian public needs to be given more recourse to respond to potential environmental problems through an Environmental Bill of Rights. The public also requires access to information regarding toxic releases to the environment, who is releasing which pollutants, and what substances are being sent off-site.

More provisions to prevent the generation of pollutants in general would reduce the need to monitor emissions and avoid costly cleanups in the future. In particular, chemicals that persist in the environment should be banned or phased out.

The regulation of biotechnology within the CEPA needs to be *strengthened*, with the emphasis put on protecting the environment, human health and safety.

We are glad the Act is being reviewed, but having gathered input from such spectrum of organizations and coming this far, don't you think we could do better?

Sincerely,


Peter Au, President

Fax: 613-284-1829

cc. Hon. Jean Chretien, Fax: 613-941-6900
CEN Toxics Caucus, Fax: 416-960-9392



DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd - DCU - DOE

MAR 25 1996

Recu - UCM - MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Chris Ritchie (Chris Ritchie)

Address: P.O. Box 16 RR# 3
Middleton, N.S.
Canada! B0S 7P0

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MINISTER OF
THE ENVIRONMENT

FAX TRANSMISSION 8 15 AM '96

Rec'd-DCU-DOE

40 Pennington Crescent
Georgetown, Ontario, L7G 4L3
905 877-7745
Fax: 905 877-7657

38958

MAR 25 1996

0-1025-1
0-1165-36/1515To: Hon. UCM Hon. Minister of the Environment
Honourable Sergi Marchi

Date: March 21, 1996

Fax #: 819 953-3457

Pages: 1 (including this cover sheet)

From: Fraser Robin

Subject: Canadian Environmental Protection Act

COMMENTS:

As a member of the Liberal Party and one that has contributed both time and money to ensure a Liberal Government, I wish to comment on the changes to the CEPA. There are many advantages to taking leadership in strengthening this act. I encourage you to take the lead in the protection of the environment with improved standards. Recent media releases from Gr. Britain have expressed concern on the reduced sperm content in the human male, suspecting pollution as a cause, which should give us some incentive to search for improvements for our environment.

Canada could lead the way with new standards which would encourage our entrepreneurs to meet the challenge and develop new tools and technical expertise required. This would provide the opportunity for Canadians to lead the world in environmental technology, providing expertise that would be sought out as the rest of world society comes to realize the need for this new science.

Society needs to develop the technology to remove the pollutants from incinerators they are released into the environment. We need an economical means of testing for these pollutants before incinerator technology gets widespread usage in our densely populated urban areas. We need protection in the area of biotechnology, including such proposals as the bovine growth hormone.

The benefits would be realized by the protection of our environment now and the new technology would provide a new source of future exports. Canada could become a world leader in this science instead of a follower and then importing this technology from others. Canada needs more technology that will lead the way into future exports and growth.

The way to ensure this growth is with well defined standards and enforcement of the law to ensure that polluters, who break the law, pay for the clean-up rather than the overburdened taxpayer.

Yours truly,

Fraser Robin

cc. Julian Reed, MP
Halton Peel

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Regu-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Wendy Rodda

Address:

P.O. Box 863

Middleton NS.

B0S 1P0

CEPA

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Dawn M. Russell

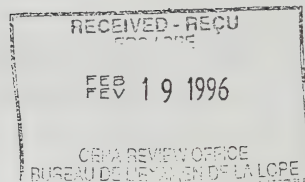
Address: P.O. Box 862

Wolfville, Nova Scotia

BOP 1X0

Feb. 13/96

CEPA
Environment Canada
15th floor, Place Vincent Massey
Hull, Quebec
K1A 0H3



Dear Sir or Madam,

Re: Government response, a Renewed CEPA

As the basis for CEPA is protection of human and wildlife health, and a healthy, sustainable environment, I was wondering if some consideration could be given to those individual members of species, who are used in experimentation to supply the scientific data you require.

These individuals, particularly at the higher levels of development, can suffer considerable physical and mental anguish. Could CEPA not try to establish criteria which would accept data obtained by other means, rather than using live animals? At the very least, duplication of effort should never be required - ie. the results of one set of experiments should be available to others.

Thank you for giving this some thought.

Sincerely,

Jan Samis
Box 183, Newburgh
Ont. K0K 2S0



STOP

651, rue Notre-Dame Ouest
Bureau 130
Montréal (Québec) H3C 1H9

RECEIVED
MINISTER OF
ENVIRONMENT
3 37 PM '96

Téléphone
(514) 393-9559
Fax
(514) 393-9588

Rec'd-DCU-DOE

MAR 28 1996

Regu-UCM-MDE

22 March 1996

139051

0-1025-/
0-1165-36/S157

The Honourable Sergio Marchi
Minister of the Environment
Government of Canada
Ottawa, Ont.
K1A 0H3

Re: Review of Canadian Environmental Protection Act

Dear Sir:

STOP is a non-profit citizens' environmental group. Incorporated in the Province of Québec in 1970, STOP deals with a wide variety of environmental issues at the local, regional, provincial, and national levels. With respect to the Canadian Environmental Protection Act, STOP has submitted briefs to the appropriate Standing Committee of the House of Commons on two occasions; in December 1987, and again in October 1994.

Overall, STOP is disappointed with the government's response to the Standing Committee's report entitled It's About Our Health (June 1995). We wish to bring to your attention the following specific concerns:

1. Biotechnology

Biotechnology regulations should be adopted and enforced by Environment Canada and Health Canada. CEPA should continue to apply if a regulation requiring notification and assessment of potential toxicity has not been made under another federal statute.



- 2 -

2. Toxic substances

STOP volunteers are active members of three of your department's Issue Tables under the Strategic Options Process (drycleaning, degreasing, and the electric power sector). We would like to see a clear commitment to phase out production and use of persistent toxic substances based on their inherently dangerous properties, such as persistence and bioaccumulation. Specific timelines are needed.

3. Air Pollution - Vehicles & Fuels

Atmospheric emissions from motor vehicles are a function of four factors: the vehicle, the fuel, the driver, and the mechanic. Control measures designed to affect the driver and mechanic such as mandatory motor vehicle emission inspection and maintenance (I/M) programs clearly fall under provincial jurisdiction.

The Government of Canada does have jurisdiction over emissions from new on-road motor vehicles, and the fuels consumed in those vehicles. Unfortunately this jurisdiction is split between two departments--Transport and Environment. In January 1981 STOP recommended to the House of Commons Sub-Committee on Acid Rain that this split jurisdiction should come to an end. Both that Sub-Committee and the current Standing Committee have endorsed STOP's recommendation. This is an issue that can only be dealt with at the political level. We urge you to sit down with your colleague the Minister of Transport and sort this out once and for all.

STOP further recommends that CEPA should be amended to provide authority to regulate emissions from new off-road vehicles and small utility engines.

With respect to motor vehicle fuels, recent experience with benzene in gasoline, MMT in gasoline, and sulphur in diesel fuel clearly demonstrates the need for a stronger and clearer federal mandate under CEPA.

- 3 -

4. Citizen prosecutions

STOP recommends that CEPA be amended to permit individual citizens to undertake private prosecutions, and that if the Attorney General of Canada decides to pursue a prosecution initiated by a citizen, the citizen should be entitled to remain a party to the proceedings.

We understand the challenges you have before you. STOP is prepared to support you in your efforts to meet those challenges.

Sincerely yours,



Bruce Walker
Research Director
STOP

c.c. The Honourable David Dingwall
The Honourable David Anderson
The Honourable Paul Martin
The Honourable Lucienne Robillard
Charles Caccia, MP
Clifford Lincoln, MP
Canadian Environmental Network

Dept. Resp.



RECEIVED
MINISTER OF
THE ENVIRONMENT

MAR 25 8 48 AM '96

Karey Shinn, Co-Chair
The Safe Sewage Committee
P.O. Box 833, 2255-B Queen St. E.
Toronto, M4E 1G3
March 22, 1996

0-1025-1
0-1165-36/5157

The Honourable Sergio Marchi
Minister of the Environment
Terrasses de la Chaudiere
10 Wellington St., Hull, PQ, K1A 0H3, Fax 819-953-3457

Dear Minister; Re: CEPA Reform

139085

The Safe Sewage Committee is writing to inform our Federal Government that we, as Canadians, require the Canadian Environmental Protection Act to protect us against avoidable risks to the environment, especially from exposures to persistent toxic chemicals and elements.

We are human biological persons, unlike corporations which are persons under the law but exist only on paper. A weak CEPA is nothing more than a federal subsidy to polluting corporations and companies. The Toronto Star has reported that \$650,000,000. a year is spent on the health costs of asthma alone in Ontario. This is a \$650,000,000. subsidy to all those industries and products that pollute the air we breath. Ironically, many of the chemical companies creating the contamination of our environment also get rich selling medication to the victims of poor environmental standards. This is not biologically sustainable or the kind of economic development that improves the environment.

I attend hundreds of public meetings every year, including the Federal Standing Committee meeting here in Toronto to discuss CEPA. I am impressed by the strong consensus among the general public that a clean/safe/healthy environment is both possible - with strong leadership, and preferable.

Persistent toxic chemicals are expensive and destructive in the environment. Sewage treatment plants cannot remove them, only passing them on, as so many other alleged 'treatment plants' do. Large quantities of lindane and dieldrin are concentrated in Lake Ontario by both sewage treatment plants with stormwater contamination and drinking water filtration plant backwashing. It is not sustainable, to build up poisons in the drinking water source for so many Canadians.

We need to access the information on pollutants that are hazards to our lives and encourage research and technologies that can be designed to provide better products and processes to prevent continued degradation.

Preventing the manufacture, transportation and use of pollutants in our country is the most effective resolve the federal government can enforce. As human beings we ask that people not be allowed to poison other humans and living things. Corporations should not profit from the poisoning of our air water and land.

Sincerely Yours,

RECEIVED / REÇU

MAR 25 1996 JLS

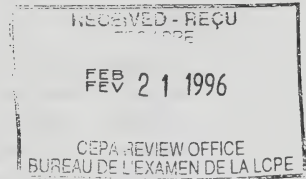
ENVIRONMENT CANADA
ENVIRONNEMENT CANADA

Rec'd-DCU-DOE
MAR 27 1996



February 15, 1996

The CEPA Office
Environmental Protection Service
Environment Canada
Ottawa, ONTARIO
K1A 0H3



Dear Sir or Madam:

Re: CEPA Review

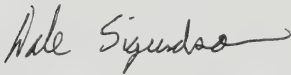
Saskatchewan Agriculture and Food (SAF) has followed the development of federal agriculture biotechnology regulations with interest for the past several years. The recommendations contained in the Recommendation of the Standing Committee on Environment and Sustainable Development of June, 1995 were of particular concern. The federal government decision not to endorse the proposed Canadian Environmental Protection Act (CEPA) regulations is supported by SAF.

The Government of Saskatchewan recognizes that products of biotechnology need to be regulated. However, the Government of Saskatchewan endorses the principle of eliminating unnecessary overlap and duplication in regulating products of agricultural biotechnology. Since products of agricultural biotechnology will be regulated under existing legislation, there is no need to include products of agriculture biotechnology in the definition of biotechnology contained within CEPA.

The CEPA Office
Page 2
February 15, 1996

The agriculture biotechnology industry is a new and emerging industry in western Canada and is particularly important to Saskatchewan. A favourable regulatory climate, developed in a timely manner, will allow the Saskatchewan industry to be competitive in the world marketplace and continue to develop and grow. Regulatory uncertainty, such as the involvement of CEPA in the regulation of agriculture biotechnology, appears to be an unnecessary constraint to the industry.

Yours sincerely,

A handwritten signature in cursive script, reading "Dale Sigurdson", followed by a horizontal flourish.

Dale Sigurdson
Assistant Deputy Minister

RECEIVED
MINISTER OF
THE ENVIRONMENT

March 21, 1996

MAR 22 8 15 AM '96

Saskatchewan Students for Environmental Action
203-115 2nd Ave. North
Saskatoon, Sask.
S7K 3N9

138966

Rec'd-DCU-DOE

The Honorable Sergio Marchi
Minister of the Environment
Terrasses de la Chaudiere
10 Wellington St.
Hull, PQ.
K1A 0H3

MAR 25 1996

Requ-UCM-MDE

0-1025-1
0-1165-36/S157

Dear Minister Marchi,

Saskatchewan Students for Environmental Action is a youth group centered in Saskatoon that is concerned about the proposed reforms to the Canadian Environmental Protection Act (CEPA). We believe that the federal government should strengthen Canada's environmental standards and legislation not weaken them, under pressure from industry. Canada's legislation should adequately protect our local, national, and international environment. We believe that a strong environmental bill of rights is needed in order to enforce CEPA. Canadian's should have access to any and all information that affects them and their environment. Information on who is releasing which pollutants into the environment should be made easily accessible by the public. However, the use of such pollutants should be halted to preserve the health of all living organisms and their environment. These polluting toxins may persist in the environment and can accumulate in humans or wildlife; neither humans nor the environment can tolerate these substances. Pollution prevention should be a high priority of CEPA; it is also crucial that it provide the means to sue offenders. Legislation that is made today will have a significant impact on all of Canada and it is important that action is taken immediately to stop the exploitation and devastation of the environment on which we all depend.

Sincerely,

Jennifer Willson
Jennifer Willson

RECEIVED
MINISTER OF
THE ENVIRONMENT

SASKATCHEWAN WOMEN'S INSTITUTES



In Affiliation with F.W.I.C. & A.C.W.W.

337 Kirk Hall
University of Saskatchewan
117 Science Place
Saskatoon, Saskatchewan
S7N 5C4
Phone: (306) 966-5556
Fax: (306) 966-8717

Rec'd-DCU-DOE

MAR 27 1995

Regu-UCM-MDE

March 22, 1996

The Right Honourable Jean Chretien
Prime Minister
Government of Canada

The Honourable Sergio Marchi
Environment Minister
Government of Canada

139070

0-10257
0-1165-36/S15

Saskatchewan Women's Institutes are very concerned about the Reform to the Canadian Environmental Protection Act. Please consider the following in your plans for Reform.

- ✓ the federal government should take a strong leadership role in environmental protection by setting strong environmental standards;
- ✓ the use and release of chemicals that persist in the environment and build up in wildlife and humans should be limited and controlled;
- ✓ the Canadian public needs an Environmental Bill of Rights, which includes the right to intervene when the environment is being harmed and the right to sue polluters who break the law;
- ✓ the Canadian public should also have the right to know who is releasing which pollutants into the environment through comprehensive public access to information that includes all toxic releases to the environment, including substances sent off-site for recycling or incineration;
- ✓ the protection of human health, safety and the environment should be the priority of the government in the regulation of biotechnology. A new section should be added to CEPA, to be administered by Health Canada and Environment Canada, which applies to all biotechnology products which may enter the environment; and
- ✓ new provisions must be enacted to require all sectors of society to prevent the use and generation of pollutants rather than to control them.

Seth Rabyloff
Admin. Coordinator



Save The Oak Ridges Moraine

S.T.O.R.M. COALITION

Box 2209, Station B, Richmond Hill, Ontario L4E 1A4

March 16, 1996

The Hon. Sergio Marchi,
Minister of the Environment,
Terrasses de la Chaudière,
10 Wellington St., Hull, PQ, K1A 0H3

1996-DCU-DOE

1996

Regu-UCM-MDE

FAX 819-953-3457

0-1025-1

38919

Dear Mr. Minister,

On behalf of STORM (Save the Oak Ridges Moraine) Coalition, we are writing to you to express our deep concern about the Federal Government's proposals to reform the Canadian Environmental Protection Act (CEPA). We are a collection of citizens' groups from across the Moraine deeply concerned about environmental protection and human health, and feel that CEPA, as the primary environmental health protection agency in Canada, should be strengthening the Act, not considering the weakening of this important piece of legislation. We are asking you to consider the following:

- (1) Chemicals that persist in the environment and build up in wildlife and humans should be banned or phased out. No life forms can tolerate these substances.
- (2) The Canadian public deserves an Environmental Bill of Rights so that we can blow the whistle on environmental degradation and the degraders.
- (3) Provide the public with comprehensive public access to polluters that includes all toxic substances released to the environment. The public has a right to know.
- (4) Regulating biotechnology must be a priority with the government. A new section should be added to CEPA, administered by Health Canada and Environment Canada.
- (5) Enact new provisions requiring all sectors of society not to use and generate pollutants, rather than just to control them.

The Federal government must take a strong leadership role in environmental protection by setting and enforcing strong environmental standards. **All of life depends on it.**

Sincerely,

per Anna Tilman

Anna Tilman, Advocacy Chair

Niva Rowan

Niva Rowan, Education Co-chair

STORM Coalition
Recycled Paper

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Regu - UCM - MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Celeste Savory CELESTE SAVORY ✓

Address: 410 Kemp Cres

Prince Albert, SASK

S6V 6H1

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revised.

YOU-DOE

MAR 25 1996

REG-1111-1111



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Val Savory

Address: R.R. 1

WILMOT, NS.

BoP1W0.

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd-DCU-DOE

MAY 25 1996

Recu-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Don Saxton

Address: RR# 1 New Germany N.S.
BOR 1FO

Don Saxton



Science for Peace

toward a just and sustainable world

UNIVERSITY COLLEGE, UNIVERSITY OF TORONTO, TORONTO, ONT. M5S 3H7
tel/fax (416)978-3606 email sfp@physics.utoronto.ca

Rec'd-DCU-DOE

Advisory Council

Mary-Wynne Ashford
Victoria, B.C.
former president
Physicians for Global Survival

Ray A. Creery
Mahone Bay, N.S.
former president
Veterans Against Nuclear Arms

Gerhard Herzberg
Ottawa, Ont.
Nobel Laureate

Eva Kushner
Toronto, Ont.
former president
Victoria University
University of Toronto

Digby McLaren
Ottawa, Ont.
former president
Royal Society of Canada

John Meisel
Kingston Ont.
former president
Royal Society of Canada

Joanna Miller
Saskatoon, Sask.
former president
UNICEF Canada

Geoffrey Pearson
Ottawa, Ont.
former Ambassador to the USSR

John C. Polanyi
Toronto, Ont.
Nobel Laureate

Anatol Rapoport
Toronto, Ont.
Peace & Conflict Studies
University College
University of Toronto

Douglas Roche
Edmonton, Alta.
former Ambassador for Disarmament

Joanna Santa Barbara
Hamilton, Ont.
former president
Physicians for Global Survival

Michael Smith
Vancouver, B.C.
Nobel Laureate

Marc-Adelard Tremblay
Sainte-Foy, P.Q.
former president
Royal Society of Canada

MAR 28 1996

March 21, 1996

The Rt. Honourable Jean Chrétien
Prime Minister
Langevin Block
80 Wellington Street
Ottawa, Ontario
K1A 0A2

Ficu-UCM-MDE

0-1025-31

139119

Dear Prime Minister:

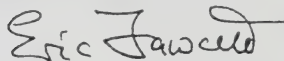
I write on behalf of *Science for Peace* to urge that the federal government strengthen its commitment to environmental protection, and demonstrate this stronger commitment by a reformed Canadian Environmental Protection Act (CEPA) of which Canadian can be proud. The new CEPA should be a model for other countries to admire and to emulate, not a sop to the corporate lobby. This Act will be scrutinized by others around the globe who need Canada's leadership in order to resist pressures applied by groups who for short-term gain would gladly undermine the future stability of the planet. If Canada - a G-7 nation uniquely rich in resources - fails to show the way, the loss will be on a global scale.

The messages of the scientific community are clear, and they show that we persist in our present practices at our peril. Further recent scholarship argues convincingly that want, thirst, famine and disease on the scale projected will generate violence from which none are safe. This concern motivates *Science for Peace* to call for intensified guardianship of the environment.

But there are other, related concerns, less direct but not less important. I mention one: In the community of nations, Canada retains a reputation for doing the right thing. This respect conveys power to Canada - a leadership role out of proportion to military might. We see it exercised with respect to the protection of Canadian culture against intrusive marketing practices; we see it manifested in the Cuban debacle in defence of the independence of Canadian foreign policy. And we see it in the prospect of imminent emergence of the Arctic Council, which has Canada's mark on its origins, but belongs to the future. A wrong-headed move by Canada could cost it much of the global esteem it now enjoys. If the review/reform of the CEPA were to be conducted in feigned isolation from the rest of the planet - if CEPA were to ignore our commitments under *Agenda 21* (Rio, 1992), for instance - we could lose friends, even circumpolar friends. And we could find our leadership role compromised. This would be costly to Canada, and - in the longer run - to peace.

We ask, therefore, for a CEPA stronger than ever with respect to pollution prevention, regulation of toxic substances, access to information and environmental rights, likewise, with respect to regulation of biotechnology and international air pollution. Finally, we want an act stronger rather than weaker than heretofore in its protection of biodiversity.

Sincerely,



Professor Eric Fawcett
President of Science for Peace

cc: Sergio Marchi, Minister of the Environment

Appendix: Key Points

- * the federal government should take a strong leadership role in environmental protection by setting strong environmental standards;
- * the use and release of chemicals that persist in the environment and building up in wildlife and humans should be banned or phased out, since neither humans nor the environment can tolerate these substances;
- * the Canadian public needs an Environmental Bill of rights, which includes the right to intervene when the environment is being harmed and the right to sue polluters who break the law;
- * the Canadian public should also have the right to know who is releasing which pollutants into the environment through comprehensive public access to information that includes all toxic releases to the environment, including substances sent off-site for recycling or incineration;
- * the protection of human health, safety and the environment should be the priority of the government in the regulation of biotechnology. A new section should be added to CEPA, to be administered by Health Canada and Environment Canada, which applies to all biotechnology products which may enter the environment; and
- * new provisions must be enacted to require all sectors of society to prevent the use and generation of pollutants rather than to control them.

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revised.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Howard Selig Howard Selig

Address:

Box 863
Middleton N3
Box 100

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd-DCU-DOE

MAR 25 1996

Recu-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Margaret Sheppard Margaret Sheppard

Address: P.O. Box 727

Kingston, N.S.

B.O.P. I.R.O.



Sierra Club of Canada / Sierra Club du Canada

412-1 rue Nicholas St., Ottawa, Ontario K1N 7B7 Tel: (613) 241-4611 Fax: (613) 241-2292 Internet: sierra@web.apc.org

Hon. Sergio Marchi
Minister of the Environment
House of Commons
Ottawa, K1A 0A6

Rec'd-DCU-DOE

MAR 27 1996

Regu-UCM-MDE

139081

6-1025-1
0-1165-36/S157

March 21, 1996

Dear Minister,

I would like to reiterate Sierra Club's full support for the Canadian Environmental Law Association's brief on the federal government's proposed changes to the Canadian Environmental Protection Act.

Furthermore, the CEPA should place the onus of proof of safety on companies seeking the introduction of new chemicals, not the public, prior to receiving regulatory approval.

We would also like to stress that it is imperative the CEPA be amended to provide the regulatory tools to properly deal with chemicals capable of endocrine disruption. Endocrine disruption was not even considered when CEPA was first passed in 1988. In that regard, we hope you will be able to meet with Dr. Theo Colborne when she is next in Canada.

In addition, you should have the necessary instruments to curb air pollution from motor vehicles in order to more effectively combat climate change. The recommendations of the Standing Committee to move the Motor Vehicle Safety Act to CEPA would give the Ministers of Environment and Health the ability to limit emissions causing climate change, ground level ozone, carbon monoxide and sulphur dioxide into our atmosphere.

I look forward to working with you under a strengthened CEPA.

Sincerely,

Best wishes

Elizabeth May
Executive Director
Sierra Club of Canada

March 11, 1996

The Right Honourable Jean Chrétien
Prime Minister
Langevin Block 80 Wellington St.,
Ottawa ON, K1A 0H2

Dear Prime Minister Jean Chrétien,

We, the undersigned Sioux Lookout citizen's group, are writing to express our dissatisfaction with Federal proposals to reform CEPA.

We want the federal government of Canada to take a strong leadership role in environmental protection by setting strong environmental standards.

We want Canadian citizens to have an Environmental Bill of rights which includes the right to intervene when the environment is being harmed and the right to sue polluters who break the law.

We want the use and release of chemicals that persist in the environment and build up in wildlife and humans to be banned or phased out, since neither humans nor the environment can tolerate these substances.

We have the right to know who is releasing which pollutants into the environment through comprehensive public access to information that includes all toxic releases to the environment, including substances sent off-site for recycling or incineration.

We want the protection of human health, safety and the environment to be the priority of the government in the regulation of biotechnology. We want a new section to be added to CEPA, to be administered by Health Canada and Environment Canada, which applies to all biotechnology products which may enter the environment.

We want new provisions to be enacted to require all sectors of society to prevent the use and generation of pollutants rather than to control them. We look forward to your response.

Very truly yours,

Sioux Lookout citizens group in
response to CEPA reforms

The Hon. Sergio Marchi
Minister of the Environment
House of Commons
Ottawa, Ont.
K1A 0A6

Rec'd-DCU-DOE

FEB 15 1996
FEB

Regu-UCM-MDE

P.O. Box 298
Weymouth N.S.

BOW 3TO

7/2/96

0-1025-1

0-165-36/S157

138029

Dear Minister Marchi,

I hope very much that the government will act on the Standing Committee on Environment and Sustainable Development's recommendations to improve the Canadian Environmental Protection Act.

According to my information, the Liberal Party committed itself in its red book to make the CEPA a more meaningful act. Apparently the proposed legislation falls far short of accomplishing this.

Major disappointments include the following: A failure to:

- * legislate the phase-out of all persistent toxic chemicals
- * require industry to develop plans to avoid the use of dangerous chemicals
- * regulate biotechnology
- * give citizens public participation rights and effective rights to sue polluters who break environmental laws
- * provide for improved coastal zone management.
- * implement measures to protect biodiversity

I am not an expert, but I know enough to know that current legislation is woefully inadequate. Agriculture Canada has banned some toxic chemicals as active ingredients but these can still be used in pesticides and their use can be kept secret because companies claim they are "trade secrets". Many people have become "environmentally sensitive". I see these people as the "canaries" of our population. Their bodies are reacting more quickly than most to the poisons we have allowed to be used and dumped in our food and environment. These people can improve their condition by avoiding the food most of us eat and by buying only organic food. It's obvious that we should work to make sure that all of the population is not exposed to contaminated food, water and environments.

I recognize that it would be tempting for governments not to effectively regulate biotechnology. Governments are generally eager for Canadian industry to find new products to sell on the world market. Biotechnology represents one possibility for new products. But exploiting biotechnology will not be good for Canadians or their country. BGH is a good example of a lucrative product of biotechnology that we should avoid.

Canada committed itself at the Earth Summit to protect biodiversity. It is a shameful disappointment that proposed biodiversity legislation is inadequate. Canada continues to allow logging and fishing technologies that destroy species while other countries, in Europe for instance, have, in some cases, improved their technologies. These countries are in a position to sell us their improved technologies (in forestry especially). We should change the way we harvest fish now and later we may be in a position to sell our technology elsewhere. Even if we never sell any environmental technology, we would benefit not only environmentally but economically from requiring the use of less damaging and more labour-intensive methods of logging and fishing.

Please reply to my letter soon, stating what you will do to ensure that Canada improve its scorecard on CEPA.

Sincerely,

Jan Slaker

c.c. the Hon. Len Taylor, MP
the Hon. Charles Caccia, MP

The Soap and Detergent Association of Canada Association des Savonniers Canadiens

A Division of **CMCS**

56 Sparks Street – Suite 702, Ottawa, Ontario K1P 5A9 • Telephone (613) 232-6616 • Facsimile (613) 233-6350

Rec'd-DCU-DOE

March 20, 1996

The Honourable Sergio Marchi, P.C., M.P.
Minister of the Environment
28th Floor, 10 Wellington Street
Hull, Quebec K1A 0H3

MAR 28 1996

Regu-UCM-MDE

0-1025-31

139120

Dear Minister:

RE: Government Response to the Recommendations of the Standing Committee on
Environment and Sustainable Development

The Soap and Detergent Association of Canada (SDAC) represents manufacturers of soap, detergent and cleaning products in Canada.

The SDAC wishes to comment on the Government Response "Environmental Protection Legislation Designed for the Future - A Renewed CEPA". The SDAC supports the comments presented by the Canadian Manufacturers of Chemical Specialties (CMCS) in their submission dated March 20, 1996. The SDAC also supports the comments presented by the Canadian Chemical Producers Association (CCPA) in their submission dated Feb. 23, 1996.

In addition, the SDAC wishes to comment specifically regarding Chapters 7 and 8. With regard to Chapter 7 - Biotechnology, we agree that non-living products of biotechnology, such as laundry product enzymes, should continue to be dealt with under CEPA. They should be managed in a manner consistent with other chemicals under the current or future provisions of CEPA. Non-living products of biotechnology should be treated like any other chemical, regardless of their source or production method.

With regard to Chapter 8 - Nutrients, we agree that no further regulation of nutrients is indicated for household cleaning products since they represent a very minor source of nutrients versus other much larger contributors. The much more significant phosphorus contributors are agricultural, raw sewage, construction runoff and natural sources. Nutrient control programs, if indicated, must address these significant contributors.

We appreciate this opportunity to comment. Thank you for your consideration of this input.

Sincerely,



Anne E. McConnell
Chair, Technical Committee SDAC

cc: List attached

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

REC'D-DCU-DOE

MAR 21 1995

REC'D-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Brian Stockford

Address:

42 Hall Rd

RR #6

Kingston ON

BOP 1K0

RECEIVED
MINISTER OF
THE ENVIRONMENTAssociation of Friends of
Anishinabe Spiritual Centre1091 Anderson Lake Road, P.O. Box 5286 Espanola, Ontario P5E 1S4
Telephone No. (705) 869-4994 Fax No. (705) 869-4996

March 22, 1996

39062

The Honourable Sergio Marchi
Minister of Environment
Terrasses de la Chaudiere
10 Wellington St.,
Hull, Quebec,
K1A 0H3

Rec'd-DCU-DOE

MAR 27 1996

Recu-UCM-MDE

Dear Mr. Marchi:

Living in a region of the country that has been environmentally devastated in the past (I refer to the Sudbury basin and the Algoma region with its uranium pollutants etc.) and which has also made much progress in recent years--for which the area has won awards--I am concerned that the reform of CEPA will be a great set back for us here in the North.

As a physician as well as clergyman I am concerned about the health effects a weakend Act will have on the local population. I am particularly concerned about native health, and have been involved for several years in the health transfer process which we have recently completed in our area.

We need to be able to defend the environment as concerned citizens and so I advocate an environmental bill of rights that will also take into consideration new biotechnologies with all their benefits and burdens.

Given our diminishing health care system it is imperative that we move in the direction of "primary prevention" --that is the elimination of the causes of diseases rather than the treatment of the diseases that have eventuated from environmental insults.

the Lalonde report years ago pointed the way in this regard. Let us follow through at this juncture to make our Home and Native Land a safe place to live and work.

Yours Sincerely,

A handwritten signature in cursive script, appearing to read "Michael Stogre".

Fr. Michael Stogre M.D. Ph.D.

Syncrude

Jim Carter

Chief Operating Officer &

Vice President, Operations

March 21, 1996

Honourable Sergio Marchi
Minister, Environment Canada
House of Commons
Ottawa, Ontario K1A 0A6

Dear Minister:

Last September, I wrote expressing concern with the Report of the House of Commons Standing Committee on Environment and Sustainable Development titled "Its About Our Health! Towards Pollution Prevention". Therefore, it was with interest we at Syncrude reviewed the Government Response, and your Proposal for a renewed CEPA.

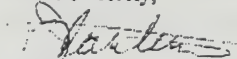
We were pleased to note the care with which your government has considered the merits of the Standing Committee recommendations, and the concerns expressed by many reviewers. The Proposal documents display considerable common sense, and a commitment to continuity of policy in some key areas.

There are, however, aspects of the Proposal which warrant further consideration. The proposed changes aggregate to a substantial additional bureaucratic loading for Canadian industry, an extensive array of further areas of Federal Government regulation (frequently in areas duplicating provincial activity, such as non-hazardous wastes), and provisions for numerous new taxes, economic instruments and cost recovery charges. The total effect of the individual initiatives may exceed the intent. We would like to see the principle of risk assessment incorporated in the whole Act (not just the Toxics Section as proposed), and consider the civil "right to sue" provisions unnecessary.

Although Syncrude will not be submitting a detailed review of the specific recommendations in the Proposal, we are contributing to industry association reviews of the document. I urge you to continue to give careful consideration to the views of Canadian industry.

Working together, government and industry can ensure the sustainable development of the Canadian economy, through efficient regulation and diligent environmental management practices. A thoughtful recrafting of the Canadian Environmental Protection Act is an essential enabling step in that direction. Thank you for your attention to industry comments, and for your efforts to reach our common goal.

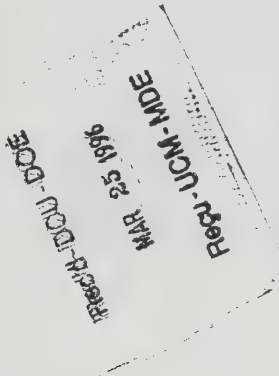
Yours sincerely,



Jim Carter

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Kelly Taylor Kelly Taylor

Address: Box 624 Middleton

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Recd-UCM-MDE

MAR 25 1996

Recu-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

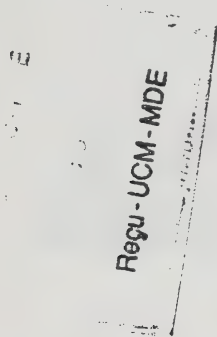
Name: Kelly Teichrib

Address: 9475 Hwy #201, R.P.#1 Wilmet, N.S.

BOP IWO

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Honour Tett (Honour TETT)

Address: RR #2

Middleton

N.S. B05 1P0

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd - DCU - DOE
MAY 25 1996
DOE - UCM - MEX



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Marsha Libideau

Address:

Annapolis Royal, NS
B0S 1A0

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: ROGER THOMAS Roger Thomas

Address: Greenwood N.S.

RECEIVED
MINISTER OF
THE ENVIRONMENT

MAR 21 9 07 AM '96

Public Health

Toronto Food Policy Council

277 Victoria Street
Suite 203
Toronto, Ontario
M5B 1W1
Telephone: (416) 392-1107
Facsimile: (416) 392-1357

March 20, 1996

Rec'd-DCU-DOE

Hon. Sergio Marchi
Minister of the Environment
Terrasse de la Chaudiere
10 Wellington St.
Hull, Quebec
K1A 0H3

MAR 22 1996

Requ-UCM-MDE

0-1025-1
0-1165-36/5157

38943

Dear Sir:

Further to our communication of January 30, 1996 with the Hon. Ralph Goodale regarding the inconsistencies of the government's position on the labelling of "novel foods derived through genetic engineering", we would like to express our opposition to the proposals on the regulation of biotechnology contained in the government's December 1995 response to the June report of the House of Commons Standing Committee on Environment and Sustainable Development.

We are deeply concerned that the government's proposal would significantly weaken the provisions of the existing Canadian Environmental Protection Act as they apply to biotechnology. The minimum standards for notification and assessment of toxicity for all productions of biotechnology currently provided for by CEPA would be eliminated.

This proposal is inconsistent with the intent of the Standing Committee's recommendations regarding the regulation of biotechnology under CEPA, and could endanger the health, safety and environment of Canadians. It is also completely out of step with most segments of Canadian society, except the biotechnology industry and apparently, certain departments of the federal government. Survey after survey confirms that Canadians want regulation of biotechnology and want biotechnology products to be labelled so that consumers can make informed choices in the market place.

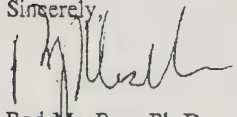
It is also clear that regulatory authority must rest with Environment Canada and Health Canada. Agriculture and Agrifood Canada (AAC) is in an obvious conflict of interest, one that would be offensive to most Canadians if they were clearly aware of it. Given AAC's desire to have the lead regulatory role, how does Mr. Goodale justify being a major promoter of the biotechnology industry and claim any capacity to regulate the industry to ensure the health and safety of the population and our environment? Regulatory failure, and its associated health and environmental tragedies, are the common result of departments attempting to play both these roles concurrently.

Consistent with the intent of the Standing Committee's recommendations, a new biotechnology part should be established under the CEPA. It should:

- apply to all products of biotechnology which may enter the environment, including those which the government currently proposes to regulate under other Acts, such as the *Seeds Act*, the *Pest Control Products Act*, and the *Fertilizers Act*;
- establish requirements for the assessment of biotechnology products in terms of:
 - their potential immediate or long-term, direct or indirect effects on human life and health, the environment, and biodiversity, including cumulative impacts;
 - their potential effectiveness of the products for their intended purposes; and
 - the availability of alternative means of achieving these products' purposes which may present lower potential for harm to the environment and human health;
- provide for public participation in decision-making regarding biotechnology including:
 - public notice of major decisions regarding biotechnology products;
 - public notice of proposed field tests of biotechnology products;
 - opportunities to appeal government decisions regarding biotechnology products, including the approval of field tests; and
 - enhanced access to information regarding products of biotechnology.
- establish a full-cost recovery, user-pay system for approvals of biotechnology products; and
- provide for the establishment of a database of environmental releases of products of biotechnology in Canada.

Mr. Marchi, the on-going attempts of the federal government to limit public participation in the development of biotechnology policy and the condescending assurances to the general public of the merits and safety of biotechnology products have damaged the government's credibility in this domain. Failure to maintain, through CEPA, the minimal protections in place will, for many, thoroughly compromise the government's authority to act for the interests of the general public and the environment. We urge you change the government's position.

Sincerely,



Rod MacRae, Ph.D.
Research Coordinator

cc. Rt. Hon. Jean Chrétien
Hon. Ralph Goodale
Hon. Charles Caccia



THE TOWN OF PICKERING WASTE REDUCTION COMMITTEE

Ed-DCU-DOE

MAR 21 1996

Regu-UCM-MDE

March 18, 1996.

0-1025-1

The Honourable Sergio Marchi,
Minister of the Environment,
Terrasses de la Chaudière,
10 Wellington St.,
Hull, PQ, K1A 0H3

38883

Dear Mr. Marchi,

RE: CANADIAN ENVIRONMENTAL PROTECTION ACT

The Pickering Waste Reduction Committee, a group of citizens who work towards helping the Town of Pickering, Ontario reach its 50 percent waste reduction objective goal by the year 2000, is concerned about the recent announcement that our Canadian Environmental Protection Act is in danger of being eroded.

We believe that the federal government should take a leadership role in environmental protection by setting strong environmental standards. This means that the use and release of chemicals that persist in the environment should be phased out. Also we believe that Canadians need an Environmental Bill of Rights which includes the right to intervene when the environment is being harmed as well as the right to sue polluters who break the law.

The time to address and strengthen these issues is now before it is too late!

Sincerely,

Lorraine Roulston,
Chair.

REDUCE
REUSE
RECYCLE

RECEIVED
MINISTER OF
THE ENVIRONMENT

MAR 22 3 33 PM '96

TOXICS WATCH
• society •

139036

March 22, 1996

The Honourable Sergio Marchi
Minister of the Environment Rec'd - DCU - DOE
Terrasses de la Chaudière
10 Wellington Street
Hull, Quebec K1A 0H3

MAR 26 1996

Regu - UCM - MDE

Dear Mr. Minister:

On behalf of the Toxics Watch Society of Alberta, please accept our belated congratulations on your appointment as Minister of the Environment.

We are writing to you today regarding the government's response to the Report of the House of Commons Standing Committee on Environment and Sustainable Development, *It's About Our Health! Towards Pollution Prevention*.

Toxics Watch was pleased to testify before the Standing Committee during the public hearings in 1994 and was supportive of the recommendations which resulted. However, we were gravely disappointed with the Government's response.

We would like to bring the following points to your attention:

On Federal Leadership:

We believe that the federal government should take a strong leadership role in environmental protection.

On Toxic Substances:

The use and release of chemicals that persist in the environment and build up in wildlife and humans should be phased out.

A legislated pollution prevention framework to eliminate the generation of pollutions should be enabled.

The National Pollutants Release Inventory should be improved to include all toxic releases to the environment, including off-site transfers.

On Bio-technology:

Bio-Technology should be a regulatory priority in CEPA.

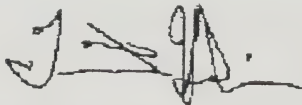
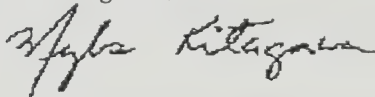
On Environmental Rights:

Canadians should be awarded with stronger rights to file suit with polluters, particularly in the context of downloading of Government responsibilities onto third-parties through harmonization and de-regulation.

As you are aware, Alberta is in the process of increasing their reliance on self-reporting in environmental enforcement. We have little confidence in a system which relies on the violators to inform authorities as to when an environmental crime has occurred. We believe that awarding stronger powers to individual citizens is one remedy for this situation. We also support you in your position regarding voluntary enforcement as was reported in the Edmonton Journal.

We look forward to receiving your written response on these matters.

Best Regards,



Myles Kitagawa
Associate Director

Trent Hardin
Associate Director

Toxics Watch Society of Alberta

10511 Saskatchewan Drive
Edmonton, Alberta T6E 4S1
vox: 403 433 9302
fax: 433 9305

cc. The Right Honourable Jean Chretien, Prime Minister

TransAlta Corporation

110 - 12th Avenue S.W., Box 1900, Calgary, Alberta, Canada T2P 2M1, Telephone: 403-267-7110

March 22, 1996

The Hon. Sergio Marchi, P.C., M.P.
Minister of the Environment
Terrasses de la Chaudière
10 Wellington Street, 28th Floor
Ottawa, Ontario
K1A 0H3

Dear Minister Marchi,

On behalf of TransAlta Corporation I would like to take this opportunity to thank you for the opportunity to provide input into the review of the recently-released "Environmental Protection Legislation Designed for the Future - A Renewed CEPA." The following comments are provided for your consideration:

Recognition of the harmonization agreement:

The Administration chapter discusses harmonization but does not appear to recognize the Environmental Management Framework Agreement (EMFA or Harmonization Agreement). We support the Harmonization Agreement as a way of minimizing duplication of roles and responsibilities between the Government of Canada and the provinces in the area of environmental protection. We recommend that the Harmonization Agreement specifically referenced in the Administration chapter of this report and that the Government of Canada actively support the successful implementation of the Agreement.

Triggers to ban substances

We are concerned with the expanded definition of "toxic", specifically the use of any other country's banning of a substance as reason in itself for banning that same substance in Canada. This approach does not account for differences between countries. Another country banning a substance could be used as a trigger to review whether the use of a substance should be banned.

Use of risk assessment data

We are pleased to see that the risk assessment method of determining toxicity has been retained. However, we would like data provided from this risk assessment method to be used to develop options and solutions to manage toxic substances in addition to determining toxicity. This would ensure that limited resources are directed in the most efficient and effective manner.

TransAlta Corporation

- 2 -

March 22, 1996

Use of virtual elimination under CEPA

We are concerned about legislating the concept of virtual elimination for Track 1 substances and how "virtual elimination" will be defined. The use of the virtual elimination approach outlined in the Toxic Substance Management Plan is inconsistent with a risk assessment and management orientation. There is a high probability that the incremental costs associated with pursuit of virtual elimination would be substantial with decreasing incremental environmental benefits.

Incorporation of off-site recycling as part of pollution prevention

In the legislation an arbitrary distinction is made between off-site and on-site recycling. Off-site recycling is not considered to be a valid means of pollution prevention while on-site recycling is. This distinction relative to the geographic location of the recycling is an arbitrary distinction which has no discernible environmental benefit and should be eliminated.

Pollution Prevention Plans

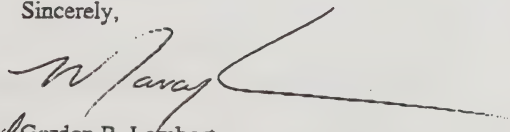
We are concerned about the potential for unnecessarily onerous submissions to address issues already adequately considered under provincial regulation or through voluntary continuous improvement initiatives. We, therefore, suggest that pollution prevention plans addressed within CEPA be used by exception for issues not covered by provincial regulation or by existing voluntary initiatives.

Use of Non-Regulatory Approaches

The CEPA list of non-regulatory approaches should be broadened to include voluntary commitments to recognized standards developed by organizations such as ISO (e.g. ISO 14000) or CSA.

We appreciate the opportunity to provide input into the further development of CEPA. If you would like to discuss any of these comments further, please contact me at (403) 267-2534.

Sincerely,



Gordon R. Lambert
Director
Sustainable Development
TransAlta Corporation

cc: John Tapics
Jim Leslie

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Charles Trask

Address: 32 Elm St.

Yarmouth N.S.

B5A 2P9

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd-DCU-DOE

MAY 21 1996

Rec'd-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Alain St-Onge

Address:

100

St-Jacques St.

Montreal

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Recd-DCU-DOE

MAR 23 1996

Regu-DCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Tina Trimmer Tina Trimmer

Address:

Nidaux RR#3 Middleton

BOS IPO

Laurana Tucker
Box 11, Saulnierville
N. S. B0W 2Z0

138977

The Hon. Sergio Marchi
Minister of the Environment
House of Commons
Ottawa, Ont.
K1A 0A6

Rec'd-DCU-DOE

March 8, 1996

MAR 25 1996

Rec'd-UCM-MDE

0-1025-1
0-1165-36/
5157

Dear Minister Marchi,

I hope very much that the government will act on the Standing Committee on Environment and Sustainable Development's recommendations to improve the Canadian Environmental Protection Act.

According to my information, the Liberal Party committed itself in its red book to make the CEPA a more meaningful act. Apparently the proposed legislation falls far short of accomplishing this.

Major disappointments include the following: A failure to:

- * legislate the phase-out of all persistent toxic chemicals
- * require industry to develop plans to avoid the use of dangerous chemicals
- * regulate biotechnology
- * give citizens public participation rights and effective rights to sue polluters who break environmental laws
- * provide for improved coastal zone management.
- * implement measures to protect biodiversity

I am not an expert, but I know enough to know that current legislation is woefully inadequate. Agriculture Canada has banned some toxic chemicals as active ingredients but these can still be used in pesticides and their use can be kept secret because companies claim they are "trade secrets". Many people have become "environmentally sensitive". I see these people as the "canaries" of our population. Their bodies are reacting more quickly than most to the poisons we have allowed to be used and dumped in our food and environment. These people can improve their condition by avoiding the food most of us eat and by buying only organic food. It's obvious that we should work to make sure that all of the population is not exposed to contaminated food, water and environments.

I recognize that it would be tempting for governments not to effectively regulate biotechnology. Governments are generally eager for Canadian industry to find new products to sell on the world market. Biotechnology represents one possibility for new products. But exploiting biotechnology without adequate safeguards will not be good for Canadians or their country. BGH is a good example of a lucrative product of biotechnology that we should avoid.

Canada committed itself at the Earth Summit to protect biodiversity. It is a shameful disappointment that proposed biodiversity legislation is inadequate. Canada continues to allow logging and fishing technologies that destroy species while other countries, in Europe for instance, have, in some cases, improved their technologies. These countries are in a position to sell us their improved technologies (in forestry especially). We should change the way we harvest fish now and later we may be in a position to sell our technology elsewhere. Even if we never sell any environmental technology, we would benefit not only environmentally but economically from requiring the use of less damaging and more labour-intensive methods of logging and fishing.

Please reply to my letter soon, stating what you will do to ensure that Canada improve its scorecard on CEPA.

Sincerely,

Laurana Tucker

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

INKE TURNING

Address:

Box 181

YELLOWKNIFE, Northwest Territories

X1A 2N2

Rec'd-DCU-DOE

MAR 28 1996

Regu-UCM-MDE

Roy W. Tweedle
Box 842
Prince George, BC
V2L 4T7
(604) 564-6585

March 21, 1996

139114

0-1025-31

The Honourable Sergio Marchi
Minister of the Environment
10 Wellington Street
Hull, PQ

Mr. Marchi:

Thank you for your efforts in updating the Environmental Protection Act.

It is my understanding you would like some input from the general public. It is for this reason I am taking the liberty of sending some material for your perusal.

I am currently writing a book, which should be available sometime in late April or early May. The theme of the book is that we are destroying our environment, at an alarming rate, simply for the sake of profits.

Part of the book cover the aspect of destroying forest areas for the creation of agricultural areas. As the book points out, this is a totally unnecessary undertaking, as we already have more than a sufficient amount of agricultural land. We simply need to better understand how to utilize that which we have. The book will answer that question.

This type of destruction is no longer acceptable to the average citizen. We, as citizens of Canada, are asking for changes, changes that will ensure a clean, diverse, and natural environment for our children and grandchildren.

Part of the essential changes must be in the form of tougher environmental laws regarding the use of deadly combinations of chemicals. Another aspect of change must be the way businesses operate. We can no longer allow anyone, regardless of their standing, to destroy any part of our resources simply because of an appearance of abundance.

Our resources are not for sale, at any price, for any reason.

Too many of our health-related problems directly correlate to the use of agricultural and forestry products that contain deadly combinations of not only ozone-depleting compounds, but also adversely affect human and plant life. The time for action in this area is long overdue. No government can sit idly by and allow this type of self-destruction to continue.

The enclosed quotes will give you some idea of how other citizens and governments are reacting.

Sincerely,

Roy W. Tweedle
Roy W. Tweedle

The economic argument is always out there, and the people who are behind that argument are simply saying there is no value in an old growth forest, whether it's in the Pacific Northwest or in British Columbia; there is no value in saving some fragment of undisturbed nature. These are people who are empty at the core, they are people who have no spiritual values, who see the external world as a resource to be raided today for profit. They see no sense of the divine, or ever, ever, meditated on the meaning of life in what I think most people would agree is nature as a reflection of divinity.

Bruce Babbitt, Secretary of the Interior, 1995

The greatest legacy we can leave our children is a world rich in its diversity of life. For it is that diversity that will allow them to meet the challenge of the future and realize their hopes and dreams.

Sheila Copps

We share this planet with our kin - plants and animals that are biologically related to us. We are interdependent and connected physically through a matrix of air, water and soil in a single global community.

David Suzuki

The human race now appears to be getting close to the limits of global food productive capacity based on present technologies. Substantial damage already has been done to the biological and physical systems that we depend on for food production...A major reordering of world priorities is a prerequisite for meeting the problems we now have.

David Pimentel, Cornell University

Powerful pesticides can cause behavioural changes in animals in extremely low concentrations. A pesticide called Sevin even in an infinitesimal concentration of one billionth can change the behaviour of large schools of fish; their movement becomes uncoordinated. Yet we are pouring 1.8 billion pounds of pesticides into the environment each year.

Vice-President Al Gore, "Earth in the Balance"

Vancouver, if it were covered in a huge dome, "Within a few days the city would both suffocate and starve to death," says William Rees, director of UBC's School of Community and Regional Planning. By today's standards they would need an area 280 times the actual size of the city.

Agricultural firms are lining up partnerships to speed development of genetically engineered crops that accomodate their own pesticides or withstand the use of certain herbicides...

Patricia Commins, Reuter News Agency

In agriculture, it won't be farmers who become wealthy, it will be the chemical companies that own the herbicides and the genetically manipulated plants that can be used with those herbicides. "They can sell you the herbicide and the plant which is tolerant of the herbicide."

same as above

It has now been established, in tests done over the past three years, that chlorides are the cause of the destruction of the ozone layer, there is simply nothing in nature that will do that kind of damage...

Agricultural chemicals, forestry chemicals, governments using freon, etc. These all contribute to the depletion of the ozone, and all are the main causes of the poisoning of air, water and soil. Livestock production, timber harvesting and the bioagribusiness must be held accountable, as must governments who insist on using technologies that are harmful to the environment. The U.S. military was the biggest user of freon for cleaning equipment. THIS is the kind of double-standards we will no longer tolerate!



138885

united transportation union
travailleurs unis des transports

Suite 750 - 1595 Telesat Court
Gloucester, Ontario, K1B 5R3
Tel.: (613) 747-7979
Fax.: (613) 747-2815

OUR FILE: RAILHAUL

13 March 1996

The Honourable Sergio Marchi
Minister of the Environment
Room 103 S, Centre Block
House of Commons
Ottawa, Canada
K1A 0A6

Rec'd-DCU-DOE

MAR 21 1996

Reçu-UCM-MDE

0-1025-1
0-1165-36/5157

Dear Minister:

RE: Government Response to the Standing Committee Recommendations -
Environmental Protection Legislation Designed for the Future - A Renewed
CEPA.

This correspondence is in respect to the proposed changes to the Canadian Environmental Protection Act and to the above cited response to the report that was tabled in the House on December 14, 1995.

Of particular interest to our members are the proposed changes to Section 8, subsections 8.18 and 8.19, the control and/or ban of imports and exports of non-hazardous solid wastes.

Although we understand that for us to take a position on this matter would prove to be a double-edged sword, we would like to make it clear that we support the implementation of the renewed legislation inasmuch as it would control, regulate or ban the shipment of non-hazardous solid waste to the United States.

The United Transportation Union has been a strong supporter of the Rail Haul North Coalition and believes that this aspect of the legislation will go a long way in addressing our concerns about keeping Canadian jobs on Canadian soil for Canadians. We are also of the belief that we have numerous sites and advantages right here in Canada that could see a growth in jobs, research and new industry opportunities.

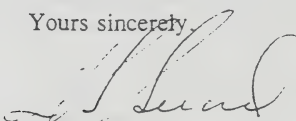
Page two

The United Transportation Union, through the Coalition has supported the Adams Mine site in Northern Ontario as just one example of utilizing our own resources to benefit the citizens of our own communities. The billions of dollars in the waste management sector, we believe, would assist not only in job creation and, research and development for this ever growing industry, but would also assist in attempts at deficit reduction so prevalent in today's society.

The United Transportation Union supports the position of the Rail Haul North Coalition and encourages the Government to implement the recommended changes to CEPA which would initiate new controls on cross-border shipments of non-hazardous solid waste.

Thanking you in advance for your consideration in this matter, with kind regards, I am

Yours sincerely

A handwritten signature in dark ink, appearing to read 'T. S. Secord', written in a cursive style.

T. S. Secord
Canadian Legislative Director

cc: G. King - Rail Haul North Coalition
Jack Burrows - Mayor, City of North Bay

UNIVERSITY of GUELPH

March 5, 1996

TRI-COUNCIL ECO-RESEARCH CHAIR
IN ECOSYSTEM HEALTH
Faculty of Environmental Sciences

The Honourable Sergio Marchi
Minister of the Environment
Terrasses de la Chaudiere
10 Wellington Street
Hull, Quebec, Canada K1A 0H3

Rec'd-DCU-DOE

MAR 12 1996

Regu-UCM-MDE

0-1025-1

38653

Dear Minister Marchi:

This is your time to take a stand on the environment, and bring Canadian environmental standards in line with the rest of the developed world. I understand CEPA is undergoing review. The federal government should take a leadership role in environmental protection by setting strong standards. Specifically, with respect to CEPA:

- The use and release of chemicals that persist in the environment and build up in wildlife and humans should be banned or phased out, because neither humans nor the environment can tolerate these substances;
- The Canadian public needs an Environmental Bill of Rights, which includes the right to intervene when the environment is being harmed, and the right to sue polluters who break the law;
- The Canadian public should also have the right to know who is releasing which pollutants into the environment through comprehensive public access to information that includes all toxic releases to the environment, including substances sent off-site for recycling or incineration;
- The protection of human health, safety and the environment should be the priority of the government in the regulation of biotechnology. A new section should be added to CEPA to oversee all biotechnology products which may enter the environment;
- New provisions must be enacted to require all sectors of society to prevent the use and generation of pollutants; this is more effective than simple control of pollutants.

Sincerely,

Aviva H. Patel

Aviva Patel, Ph.D.

March 21, 1996

The Environmental Working Group
University of Guelph
Blackwood Hall
Faculty of Environmental Science
Guelph, Ontario
N1G 2W1

The Honourable Sergio Marchi
Minister of the Environment
Terrasses de la Chaudiere
10 Wellington St., Hull, PQ,
K1A 0H3

Rec'd-DCU-DOE

139047

MAR 26 1996

The Rt. Honourable Jean Chretien,
Prime Minister
Langevin Block
80 Wellington St.,
Ottawa, ON,
K1A 0A2

Rec'd-UCM-MDE

0-1025-1
0-1165-36/S15

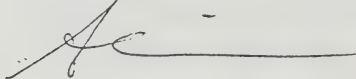
Dear Sergio Marchi and Jean Chretien:

We are a group of students at the University of Guelph who have decided to take an active role in the protection of our environment through policy measures. As a group, we have researched the proposed changes to the Canadian Environmental Protection Act, as well as the response it received and other alternative measures. We are now taking the opportunity to present you with our concerns, suggestions and evaluation.

Enclosed is a letter from one member of our group, focusing on a specific aspect of CEPA of particular concern. Please consider this and ensuing letters with care.

We would greatly appreciate a response. Please direct responses to the address provided.

Thank you,



Ann Cavlovic
Coordinator
Environmental Working Group

March 21, 1996

Jeff Butchart
University of Guelph
Environmental Science
Blackwood Hall
Guelph, Ontario
N1G 2W1

Dear Mr. Marchi:

I belong to a group of students at the University of Guelph who have decided to take an active interest in the protection of our environment through policy measures. As a group, we have reviewed the proposed changes to the Canadian Environmental Protection Act. The following is a summary of my concerns specifically regarding Toxic substances.

Toxic Substances Management

An Environment Canada 1994 discussion document titled "Towards a toxic substance management policy in Canada" outlined a framework for the management of toxic substances. The two tracked approach identifies new restrictive techniques for the handling and use of toxic substances. This preventative approach should be a goal for the federal government to achieve under the revisions to the Canadian Environmental Protection Act (CEPA). The legislation for this proposal was due out in the spring of 1995. My concern lies in the ability of the government to uphold this policy and others like it under legal attack.

I believe that the direction of this policy is achievable only if the framework for this type of legislation is sound.

The revisions to CEPA must include additional references to the crucial link between a healthy environment and human health and as well as new ideas to strengthen the tie of toxic substance management to the p.o.g.g. power. Unless this tie is strengthened, good policies like this toxic substances management policy put forward by Environment Canada may have little weight under the scrutiny of affected industries.

As apparent in the case of R. vs. Hydro Quebec in 1992, the ability of government to regulate toxic substances under CEPA is in question.

The future of the Canadian environment is at stake and dependent on the strength of the revised CEPA. In my opinion, no legislation enacted can stand any ground unless revisions to CEPA are in place that guarantee legal and constitutional soundness.

Thank you for considering my letter. I would appreciate a response.


Jeff Butchart

The Honourable Sergio Marchi
Minister of the Environment
10 Wellington St.
Hull, Quebec
K1A 0H3

Dear Mr. Marchi

I belong to a group of students at the University of Guelph which have undertaken the task of investigating the CEPA review. This letter will focus on the Biotechnology sections of the government response. On this issue the government response seems to be highly lacking, and indeed a major retreat from its previous position. The recommendations of both the standing committee and your own Priorities and Planning Committee have been totally lost. Below are summarized our major concerns about the Biotechnology initiative.

CEPA's Central Role

Our group feels that the government proposals contained in section 7.4 of the government response would weaken the biotechnology controls of the existing Act. The minimum standards for assessment of toxicity contained in CEPA would no longer apply to all biotechnology products. CEPA would be relegated to a role of "safety net" beneath other departments which would regulate using different priorities, and standards. Instead, we feel a "safety blanket" would be more appropriate with CEPA having the authority to create explicit standards for regulation by other departments to maintain overall consistency. Our group believes these measures need not create duplication, only accountability.

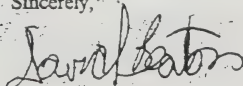
Regulator and Promoters conflict of Interest

I am concerned about the potential for conflict of interest between governmental department roles as both promoters and regulators of biotechnology products. The departments of Agriculture and Industry are often proponents of Biotechnology products. This is within their mandate, however, these same departments should not be conducting the only environmental review of these products. Environment Canada and CEPA were designed for this and should have a regulatory role, with the ability to act as an auditor to prevent lobbying pressure which could jeopardize the environmental review process.

Conclusion

Our group believes very strongly in this review process, and we appreciate and support many of proposed changes to CEPA. The changes proposed in the government response regarding biotechnology must, however, be reconsidered as they weaken environmental protection. It is vital that CEPA maintain its strong coordination and legislative powers to guide this new, exciting, and potentially dangerous technology.

Sincerely,



David Beaton

March 18, 1996

Ann Cavlovic
31 Ardrossan Place
Toronto, Ontario
M4N 2X2

Dear Sergio Marchi and Jean Chretien:

I am a student at the University of Guelph, and as part of the Environmental Working Group, I have taken an interest in the protection of our environment on a federal level. We have reviewed the Canadian Environmental Protection Act and its proposed changes. This letter details the concerns and comments I have regarding the use of economic instruments.

Enabling authority for the use of economic instruments.

I am very pleased to see an acknowledgement of the correlation between economic and environmental principles, and a commitment to incorporate both in decision-making. I feel the provisions proposed to enable the use of tradeable permit systems, deposit-refund programmes and direct financial incentives in CEPA and other statutes is a necessary and positive first step. However, simply enabling their use does not ensure that their full potential to reduce environmental damage will be utilized.

Lack of explicit provisions to ensure appropriate economic instruments are used without barriers that decrease their usefulness.

In addition to considering stakeholders, Ministers and the current tax policy for each proposed implementation of an economic instrument, some general provisions for the use of economic instruments should be incorporated into the act. More specific concerns follow. (ask mark if app)

Specific concerns regarding the treatment of economic instruments

It is true that economic instruments can supplement traditional regulatory systems, but they often should replace certain regulations. For example, by revoking emission standards for firms in an industry, some firms may pollute more than they were previously, but overall emissions by the industry can decrease if an economic instrument is put in place. Maintaining ambient standards can ensure this is the case.

Specific concerns regarding the treatment of tradeable discharge permits.

The Toxics Caucus submission to the Standing Committee detailed some advantages and problems with the use of tradeable discharge permits in Canada. I feel it is important to note that many of the "problems" seen with their use can often be attributed to additional and unnecessary constraints that prevent permits from working as intended. For example, if the problem of local loading is dealt with by enacting a complex system regulating acceptable trades, this can stifle any incentive to trade permits and thus, the efficient allocation will not be achieved. Local loading can often be dealt with simply

by maintaining existing ambient standards, requiring no more monitoring effort than before the permits were introduced. This is of particular importance for toxic substances and ocean dumping.

I have a further concern regarding the common notion that permits "privatize" the environment, and as a result, these permits should be revokable at the pleasure of the Crown to avoid legal challenges. First, any emission standard gives a firm the right to pollute to a certain extent. Second, if a firm is uncertain about the long term existence of their permit, they are not likely to see it as valuable, and thus few trades are likely to take place. If provisions to reduce the number of permits are needed, they should be subject to explicit terms, of which all firms are fully aware. The Canadian Council of Ministers of the Environment recently considered a Canadian design for the use of permits which took these concerns into account; it involved the use of coupons and shares for reducing SO₂ emissions. A discussion paper called Economic Instruments for Environmental Protection, published in 1992 as part of Canada's Green Plan also details the proper use of economic instruments, including permits.

Specific concerns regarding the use of fees.

The levying of fees can be a powerful tool, especially with regards to toxic substances and ocean dumping. They are currently in use in some areas. I feel directing the money obtained from fees to a specific fund would achieve two goals: these funds could be used to help environmental initiatives in addition to the current site remediation endeavours; and the existence of the fund under CEPA would send a strong message to Canadians about the federal commitment to protect the environment.

Thank you for taking the time to consider my comments. I would greatly appreciate a response.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Ann Cavlovic', with a long horizontal stroke extending to the right.

Ann Cavlovic

March 20, 1996

Brian Bedford
University of Guelph
Blackwood Hall
Environmental Sciences
Guelph, ON
N1G 2W1


Dear Sergio Marchi and Jean Chretien:

I belong to a group of students at the University of Guelph who have decided to take an active interest in the protection of our environment through policy measures. The following is a summary of specific concerns I have regarding the proposed changes to the Canadian Environmental Protection Act regarding enforcement.

I strongly believe that a law is valuable only if it is enforced properly. The present CEPA needs to be amended to ensure it is more actively enforced. There are a few key ways in which this could be done. First, administrative monetary penalties, if used effectively, can be powerful enforcement tools and also raise funds which can be used to aid other environmental initiatives. Secondly, more power should be delegated to CEPA inspectors/enforcers enable this and other types of enforcement measures. Third, there currently exist many legal loopholes for corporations which should be eliminated. They serve mainly as ways to avoid the law, and rarely serve the purposes for which they were originally intended. Finally, the penalties for violating CEPA should be stricter in many cases. A paper by John Livernois and Chris McKenna (Department of Economics, University of Guelph) entitled: Truth or Consequences: Enforcing Pollution Standards, suggests that often "...the cost-minimizing strategy is to set fines for non-compliance at the minimum level (i.e. zero), require self-reporting of compliance, and set fines for false reporting at the highest level possible". More progressive strategies such as this should be considered.

Thank you for taking the time to consider my letter. I would appreciate a response.

Sincerely,



for Brian Bedford

Brian Bedford

March 20, 1996

Wayne Han
387 Genevieve Ave.
Windsor, ON
N8S 3V7

Dear Sergio Marchi and Jean Chretien:

I am a student at the University of Guelph, and as part of the Environmental Working Group, I have taken an interest in the protection of our environment on a federal level. This letter details my concerns regarding the treatment of hazardous wastes under the new Canadian Environmental Protection Act.

Concerns regarding the exporting of wastes.

Waste can still be transported from Canada to Non - Organization for Economic Cooperation and Development (OECD) nations and many third world countries under the present CEPA. There is some ambiguity as to what the Government of Canada plans to do here. It is not conscientious to allow export of hazardous waste to non - OECD countries as we continue to do, despite obligations under the Basal Convention signed in 1989. This was to prohibit as of May 1994 all movements of hazardous wastes to these nations. Canada is not fulfilling its obligations in this instance. In addition, there have been other agreements setting good precedents internationally that Canada has not been a part of including the Barcelona Convention and the Lome IV Convention. In addition, the shipping of hazardous waste to poor countries where the waste may be disposed of improperly for fees, etc. is immoral and is a form of environmental racism.

Concerns regarding the recycling of wastes:

The recycling of wastes is often only a transition to other toxic products, or SIMPLY ANOTHER MEANS OF DISPOSAL (wastes are disposed of in the end anyways). Under the current CEPA, toxic wastes which are destined for recovery are often

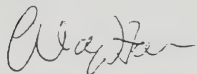
subject to more lax regulations than those wastes that are marked solely for disposal. This is not acceptable for the reasons that often recycling methods are either ineffective, or succeed only in production of another toxin. CEPA should maintain that there be no exceptions for these environmentally dangerous wastes. The fact that under the current CEPA wastes earmarked for recycling may still be shipped to non - OECD countries also stand in opposition to the Basal Convention. Recycling is an excellent solution for the future in general, but in this case is not acceptable, at least under current provisions.

The need for a clear definition of responsibilities:

CEPA can give the impression that it is acceptable to produce hazardous

wastes as they may be disposed of abroad. There is still too much room left in CEPA for this impression to come across to Canadians and Canadian corporations. What this impression and actual disposal leads to is Canadians not taking responsibility for our own wasteful society. Right now there seems to be the "magic" answer of just disposing waste overseas and across borders. As we do not have to take responsibility for our waste, we are not afraid to produce more. CEPA must take a more active role in reducing waste production as soon as it is feasible. Disposal is no answer, as all one is doing is redistributing waste, not ridding the world of it. From a conservational viewpoint, this is unacceptable, and CEPA has a responsibility to look after it.

Thank you for considering these points of concern. I look forward to your response.

A handwritten signature in cursive script, appearing to read "Wayne Han", followed by a horizontal dash.

Wayne Han

Dept. Resp.

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MINISTER OF
THE ENVIRONMENT

MAR 25 1996

Fax

ENVIRONMENT CANADA
ENVIRONNEMENT CANADA

Institute for Environmental Studies
University of Toronto
170 College St Rear
Toronto, Ont. M5S 1A4
CANADA

To: Environment Minister Sergio Marchi	From: Shirley Thompson
Fax n.: +1-819-953-3457	Fax n.: +1-416-978-3884
	Tel. n.: +1-416-978-7358
no. of pages (including this): 3	Date: March 22, 1996

Dear Environment Minister Sergio Marchi:

I am concerned that public health is not being adequately protected by the current or proposed *Canadian Environment Protection Act (CEPA)*. The cause-effect relationship between toxic, persistent chemicals and health effects is very convincing. High risk groups include children, pregnant women and northern people living off the land. Increasing cancer rates and many epidemiology studies show that the entire Canadian population is being harmed. Canadian Cancer Statistics (1996) show that 1 in 3 people are getting cancer and 1 in 4 people are dying of cancer. Between 80 to 15% of cancers are caused by "environmental carcinogens". Other rates which are increasing, with links to environmental pollution, are incidences of asthma, endometriosis and infertility. 1 in 10 children suffer from asthma in Canada. 1 in 10 women has endometriosis and 1 in 6 couples are infertile, with chlorinated compounds being suspect. Clearly the risks are so high that preventive measures must be taken quickly to protect human health.

I applaud the visionary document- *It's About Our Health: Towards Pollution Prevention*- that was released on June 20, 1995 by a Parliamentary Committee to review Canada's key law dealing with toxic chemicals, *Canadian Environment Protection Act, (CEPA)*. This massive 400 page report called for an overhaul to CEPA and the federal government role in chemical control which is badly required. The committee asserted that effective environmental and human health protection in Canada requires the federal government to play a strong leadership role for issues of "national concern" such as toxic substances. I strongly agree that the Federal government should be setting standards and setting them to zero emissions where necessary. The important recommendations include:

- Adoption of the precautionary principle;
- Incorporation of pollution prevention as the guiding principle for legislative reform, including the requirement of producers and users of toxic chemicals to prepare pollution prevention plans;
- Recognition that persistent, bioaccumulative substances be sunsetted or phased-out over a period of time;

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Change in onus requiring those wanting to introduce new chemicals into Canada prove that those chemicals are acceptable

Establishment of environmental rights for Canadians through enactment of a federal Environmental Bill of Rights; and,

Expansion of the National Pollutant Release Inventory to require dischargers to publicly report all their toxic releases.

These recommendations should be heeded.

I am aware of the sad state of limiting new chemical prior to 1993, when no reporting was required, under the *New Substances Notification Regulations*, promulgated under the *Canadian Environmental Protection Act*. Now there is a requirement that an industry or individual that wants to import or manufacture a new substance must notify the federal government and provide sufficient information for the substance to be assessed, including: chemical properties; toxicology data; environmental release data; and, usage and handling information. However, testing for hormone activity should be required for all new substances.

Canada's existing legislation endangers public health by requiring:

Proof of harm to be established before firm action is taken. Years could be required to prove a conclusive link, by which time damage has been done.

Even when injury has been established, the focus is on management and control of releases on a chemical-by-chemical basis, rather than on strategically preventing persistent toxic substance formation in the first place. Incomplete remediation or cleanup of persistent toxic substances already in environment (e.g., sediment and waste disposal sites).

With few exceptions, releases are subject to single-medium laws and regulations that protect only air, land or water. This does not recognize that persistent toxic substances enter the ecosystem via many routes and, once released, migrate among media and become widely dispersed regardless of source.

Present laws and policies do not consider - persistence, resistance to degradation, wide dispersion, and bioaccumulation - but do consider assimilative capacity.

The federal government must take a leadership role to rectify these dangerous loopholes.

The use and release of chemicals that persist in the environment and build up in wildlife and human should be banned or phased out, since neither humans nor the environment can tolerate these substances. In the Great Lakes ecosystem severe population declines in wildlife (e.g., bald eagle, cormorants) were caused by toxic persistent chemicals and higher incidences of birth defects are still occurring. Under the terms of the Great Lakes Water Quality Agreement signed in 1978, the United States and Canada agreed to implement policies that would "virtually eliminate" all sources of persistent toxicants: they agreed further that the framework for this policy should be "zero discharge".

Although few laws have been passed that echo the "zero discharge" philosophy the zero discharge banner is being taken up by advisors to every level of government. For example,

- the Ontario Round Table on Environment and Economy, in its 1992 report *Restructuring for Sustainability*ⁱ recommended that the Government of Ontario end the release of persistent bioaccumulative toxic substances by the year 2000.

- the Environment and Taxation Working Group of the Fair Tax Commission called for the phase-out of specific persistent toxics in 1992.

- the Ontario Premier's Council on Health, Social Justice and Well-beingⁱⁱ released its report *Our Environment - Our Health* to address Goal 3: Ensure a Safe, High Quality Physical Environment. This document called for banning or phasing out the most toxic, persistent and bioaccumulative chemicals by the 2000.

- the Ontario Task Force on the Primary Prevention of Cancer recommended that realistic and measurable timetables be set for "sun setting" persistent, bioconcentrating toxic substances that are known or suspected carcinogens in March 1995ⁱⁱⁱ.

- the Ontario Ministry of the Environment and Energy (MOEE) released a comprehensive report that began to identify lists of candidate substances and classes of substances for which scientific evidence indicated a rationale for their phase-out^{iv}.

One legal approach that applied zero discharge was the moratorium on new incinerators(although the Harris government has announced the repeal of Regulation 555 which provided for the ban on incineration). It can be done what is lacking is leadership. The federal government should take a strong leadership role in environmental protection by setting strong environmental standards.

The federal government must take a leadership role in moving from pollution control that manages individual substances to environmentally-sustainable production and consumption. The term "zero discharge" represents a fundamental paradigm shift in addressing toxic pollution - from pollution management to pollution prevention.

Also, the federal government should enshrine the right to a healthy environment in law. Do I have a legal right to a healthy environment in Canada? No most Canadians have no right to a healthy environment. Only in one province, Ontario, does legislation to this effect exist. The Provincial *Environmental Bill of Rights (EBR)* was proclaimed into law in February 1994. The EBR gives every citizen of Ontario the right to participate in environmental decision-making. Why is this most basic human right not present at the Federal level? An individual's rights under a Federal EBR should include:

- the right to a healthful environment

- the right to participate in government decisions that will significantly affect the environment by commenting on proposed laws, appealing environmental decisions, reviewing laws, and requesting investigations.

the right to make the government accountable for environmental decisions it makes

the right to improved access to the courts

the right to report without reprisal by your employer, environmental hazards in the workplace.

The most basic need of Canadians is a healthy environment. Please address these concerns by strengthening environmental protection laws.

Yours very truly,

Shirley Thompson, M. Eng., B.Sc, B. Ed.

ⁱⁱ Premier's Council on Health, Well-being and Social Justice. 1993. *Our Environment - Our Health*. Report of the Review Committee on Goal 3.

ⁱⁱⁱ Ontario Task Force on the Primary Prevention of Cancer. 1995. *Recommendations for the Primary Prevention of Cancer*. Ministry of Health. Queen's Printer for Ontario.

iv. Ontario Ministry of the Environment and Energy. 1993. *Candidate Substances for Bans, Phase-outs, or Reductions - Multimedia Revision*. Queen's Printer for Ontario.

Ted Woelke, UTSB Research P.O. Box 2310, Banff, AB T0L 0C0

The Honourable Sergio Marchi
Minister of the Environment
Terrasses de la Chaudiere
10 Wellington St.
Hull, PQ, K1A 0H3

0-1025-

Dear M. Marchi,

This is in response to the federal government's proposed reforms to the Canadian Environmental Protection Act. These proposals fail to adequately strengthen the Act in areas of pollution prevention, regulation of toxic substances, access to information and environmental rights. For the sake of human health and out of genuine concern for environmental protection, please consider the following points:

The federal government must take a strong leadership role in environmental protection by setting strict environmental standards.

The use and release of chemicals that persist in the environment and build up in wildlife and humans should be banned or phased out, since neither humans or the environment can tolerate these substances.

The Canadian public needs an Environmental Bill of Rights, which includes the right to intervene when the environment is being harmed and the right to sue polluters who break the law.

The Canadian public should also have the right to know who is releasing which pollutants into the environment through comprehensive public access to information that includes all toxic releases into the environment, including substances sent off-site for recycling or incineration.

The protection of human health, safety and the environment should be the priority of the government in the regulation of biotechnology product which may enter the environment.

New provisions must be enacted to require all sectors of society to prevent the use and generation of pollutants rather than to control them.

Regulatory leadership, comprehensive health and environmental standards and environmental rights must be the responsibility of the federal government in environmental protection and a renewed Canadian Environmental Protection Act.

Sincerely,
Ted Woelke

March 17th 1996

To: Hon. Sergio Marchi
Minister of the Environment

From: Michel Palmer, Chair (V.O.T.E.S.)
RR#2 Middleton, N.S., BOS-1P0
902-825-3954

Dear Sir:

My name is Michel Palmer, I am the Chair of Voice of the Earth Society, a group from the Annapolis Valley interested in health and environment issues.

We congratulate you on your new portfolio as Minister of Environment and are happy to hear that you are someone who is genuinely concerned about the environment. We feel this is the department that will determine the long term future prosperity of this country.

We are very concerned with what is happening at the federal level with regard to the environment. Between the HARMONIZATION BILL and the CEPA review, it seems that your government, contrary to its' RED BOOK promises, is abdicating its' responsibility for protecting the environment and its' citizens from the assault of toxic chemicals, falsely registered pesticides, products that are hormone mimicking, and now newly unregulated/ bio-technology products.

We have many concerns that we want to bring to your attention but I have been told that one at a time is the best way to bring them to you.

Our primary concern is about the Canadian Environmental Protection Act (CEPA) Revisited. We read the report ("It's about our health: Towards pollution prevention.") from the Standing Committee on Environment and Sustainable Development and were very impressed by its' 141 recommendations that would have given the Act the power to protect the environment and to start correcting what was done in the past.

But, it seems that we were impressed too soon and that it does not matter how good the work of a Committee is, that it is really the lobbying done in Ottawa by the chemical industry that is mostly listened to. We heard how the Departments of Agriculture Canada, Natural Resources, and Industry Canada have been pressured and how they have put pressure on the Department of Environment to change the Report.

We now have read the response of the government to the Report and it seems that whoever wrote this came from a totally different ideology and changed most of the intents of the original report.

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One of the election promises made in the Red Book to the people of this country was "to make pollution prevention a national goal and to strengthen the enforcement of federal pollution standards" and it seems this review falls far short of that promise.

We feel that it is time that the Department of Environment take a strong stand with the Department of Health to make sure that CEPA be used as the teeth needed to protect the citizen's health from environmental pollution and toxic chemicals.

Specifically, in the field of biotechnology, we must make sure that we have the regulations necessary to protect ourselves from products that are created just to serve the greed motivated interests of industry, like PESTICIDE resistant grain instead of PEST resistant grain so you not only have to buy the patented grain but the pesticide to go with it. Or bovine growth hormones which temporarily increase milk production but also increases anti-biotic use and decreases the health and life span of the animals.

These are examples of products that do nothing to improve the situation of our society or bring us closer to sustainable farming. Instead they give more of a monopoly to the manufacturers and increase the negative health effects to the population who then have to buy medication from these same companies.

If your Department and government does not protect the population from this outrageous situation it will be the second time in a row that the government of this country will have betrayed it's citizens and come next election WE WILL REMEMBER.

I am sending you my copy of our petition letters and the cover letter that we have sent across Nova Scotia and the rest of the country. We would like to receive your response to this letter as soon as possible.

Thank you for your attention.

Towards a safer + healthier world.

Michel Palmer

A handwritten signature in cursive script, reading "Michel Palmer". The ink is dark and the signature is fluid, with a long, sweeping tail on the last word.

Dear Minister:

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March 19/96

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Key Points to Include in your letter to Environment Minister Sergio Marchi and Prime Minister Jean Chrétien

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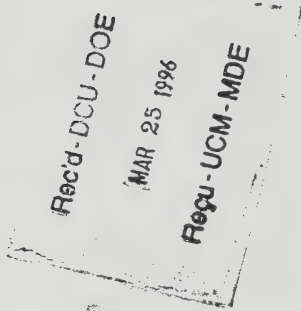
If you are going to write to Environment Minister Marchi and Prime Minister Chrétien, here are some key points that you should mention:

- ✓✓ the federal government should take a strong leadership role in environmental protection by ~~setting strong environmental standards;~~ *getting out of bed with industries;*
- ✓✓ the use and release of chemicals that persist in the environment and build up in wildlife and humans should be banned or phased out, since neither humans nor the environment can tolerate these substances; *pruning the chlorine tree won't work; we eat the fruit!*
- ✓ the Canadian public needs an Environmental Bill of Rights, which includes the right to intervene when the environment is being harmed and the right to sue polluters who break the law;
- ✓ the Canadian public should also have the right to know who is releasing which pollutants into the environment through comprehensive public access to information that includes all toxic releases to the environment, including substances sent off-site for recycling or incineration;
- ✓ the protection of human health, safety and the environment should be the priority of the government in the regulation of biotechnology. A new section should be added to CEPA, to be administered by Health Canada and Environment Canada, which applies to all biotechnology products which may enter the environment; and
- ✓✓ new provisions must be enacted to require all sectors of society to prevent the use and generation of pollutants rather than to control them. *Responsible O.R. Vallentyne, 36 Longwood Rd. N., Hamilton L8S 3V4.*

For more information, contact: the CEN Toxics Caucus, c/o the Canadian Environmental Law Association, 517 College St., Ste. 401, Toronto, ON, M6G 4A2, tel. 416-960-2284, fax 416-960-9392, or visit the WWW site on CEPA.

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Frances Vanderwel

Address: RR#1 Oylesford N.S. B0P 1C0

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd-DCU-DOE

MAR 25 1994

Regu-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

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TOWARDS POLLUTION PREVENTION

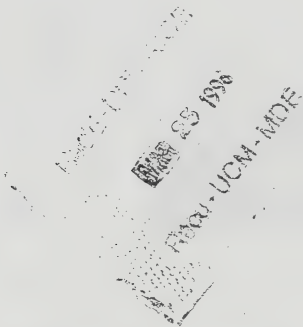
Name: Patricia Viclito

Address: RR# 2 Middleton N.S

BOSIPO

DEAR HONOURABLE SERGIO MARCHI

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IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: May Walker

Address: 563 Glenary Row
Greenwood N.S

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd-DCU-DOE

MAR 21 1996

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I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Lynn Walder

Address:

RR 2 Kingston B2P 1R0

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

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MAR 21 1996

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I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Bob Weaver

Address:

Margaretville

Anna Co

N.S.

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

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MAR 25 1996

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I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

FRANKLIN A. WILKINS

Name: Franklin Allen Wilkins

Address: P.O. BOX 67, MIDDLETON N.S.

B0S 1P0

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd-DCU-DOE

MAR 25 1996

Regu-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Margaret Wilkins Margaret Wilkins

Address: P.O. Box 1374 Middleton N.S.

B BOSIPO.

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd-DCU-DOE

MAR 25 1996

Rec'd-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Bruce D Whitman Robertson

Address: RR#1 Lawrencetown

ANNA. Co. N.S. B0S1A10

Bruce D Whitman Robertson

CEPA

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Eberhard Witt

Address: RR, 2, West Bay

Box 3KO

Nova Scotia



As North America's leading environmental services company,
we support strong clear regulations that are uniformly enforced
across the country that protect and improve our environment.
To that end we would like to submit the following comments and
suggested changes to the CEPA Review Report.

RECEIVED
MINISTER OF
THE ENVIRONMENT

MAR 22 3 33 PM '96

March 22nd, 1996

Rec'd-DCU-DOE

MAR 27 1996

Rec'd-UCM-MDE

139075

Honourable Sergio Marchi, MP,
Minister of the Environment,
Terrasses de la Chaudière,
10 Wellington Street, 28th Floor,
Ottawa, Ontario,
K1A 0H3.

0-10257/
0-1165-35/S157

Dear Minister Marchi:

RE: CEPA REVIEW: THE GOVERNMENT RESPONSE - "ENVIRONMENTAL PROTECTION LEGISLATION DESIGNED FOR THE FUTURE - A RENEWED CEPA."

We would like to compliment the Standing Committee of the House of Commons on Environment and Sustainable Development for their efforts in writing a well thought out working document and encouraging the Canadian public to help with revisions to ensure clear policies.

As North America's leading environmental services company we share many of the same environmental goals and objectives of this government. We support strong clear regulations that are uniformly enforced across the Country that protects and improves our environment.

To that end we would like to submit the following comments and suggested changes to the CEPA Review Report.

1. The objective of the Federal Government throughout the CEPA document should be to ensure that only environmental issues are regulated not administration requirements.
2. The document should be scrutinized to identify duplication of requirements and regulations of other levels of government and other Federal agreements. Any duplications should be eliminated from the document.



Honourable Sergio Marchi, MP
Re: CEPA Review: The Government Response...
March 22nd, 1996

3. The Government should work with other levels of government and within its own branches to coordinate the exchange of information. Time and resources by both government and the regulated community must be put to best use.
4. Cost recovery initiatives must be under strict controls. They should be subject to scrutiny by a committee (with the majority of members from the regulated community). Cost recovery initiatives should be necessary and kept under scrutiny. They should not be a "tax" to fund Environment Canada.
5. An electronic registry should be well thought out before any registry is established. A committee (with the majority of members from the regulated community) should be established to investigate the need for an electronic registry. At this time we could not recommend the system in place in Ontario. It is a difficult system to use and has slowed down the processing of applications.
6. Information requested by the Government from the regulated community should be needed, necessary information, not just "nice to know" information. It should be an information request that is not duplicated by another level of government or Federal department. A committee (with the majority of members from the regulated community) should be the body that decides what data is collected, how and when to make changes to the system, reduce the inconvenience to the regulated community, and to insure that the data and how it is used does not impact on a company's ability to compete fairly in a global market.
7. Information supplied to Government that is designated by the regulated business as confidential and/or proprietary must be treated by the government as confidential and/or proprietary.
8. The Federal Government must not establish intervenor funding into legislation or regulation. In the Province of Ontario it has done extreme harm to the environmental process by impeding the progress of safe, environmentally sound facilities and services. The government must always be recognized as the environmental experts who represent all citizens of Canada. Where there is a dispute between a party and the Government it should be an 'Appeal Body' comprised of professional experts in the disciplines under question that judge the dispute, not citizens.
9. We encourage the Government to investigate more thoroughly the implications and cost of the "Whistleblower" section of the document. We would recommend a clear policy be established to protect the Government and the regulated community from wanton and reckless allegations.



Honourable Sergio Marchi, MP
Re: CEPA Review: The Government Response....
March 22nd, 1996

10. Administrative Monetary Penalties (AMPS) need to be researched in greater depth before they are considered for inclusion into a CEPA regulation.
11. We encourage the Government to assure that where new enforcement officers are being considered that the officers' mandate is clearly written so that duplication or confusion over jurisdiction is totally eliminated. At no time should the regulated community be under double jeopardy. At no time should there be the opportunity for multi levels of government to pursue the same legal action. We believe that Provincial procedures are already in place that the Federal government could harmonize with - one offence, one charge, one prosecution, one fine.
12. We recommend that the Government investigate the Province of Ontario's recent policy on self initiated audits. If CEPA wants to implement a programme they should adopt one similar to Ontario's.
13. We support the Government's adoption of pollution prevention as a priority to environmental management. We would encourage the Government to include recycling, reuse and recovery as part of pollution prevention. We would encourage the Government to recognize off site recycling and reuse as pollution prevention.
14. Guidelines for pollution prevention should be flexible, as apposed to prescriptive, to allow the regulated community innovation in their pollution prevention techniques.
15. We support a N.A.F.T.A. definition for waste and recyclables to eliminate confusion between countries.
16. We do not support CEPA having the right to ban, or control non hazardous waste and recyclable import or export to N.A.F.T.A. Countries.
17. The Government must make it absolutely clear that CEPA will not ban exports of hazardous nor non hazardous waste or recyclables to the United States and Mexico. We also request that CEPA be amended to eliminate the word "control" over exports and state that they retain only the right to manifest shipments of materials to the United States and Mexico. At all times the spirit of the NAFTA agreement should be recognized throughout this document.

...3...

Ms. Nancy Porteous-Koehle
Director Public Affairs
WMI Waste Management of Canada Inc.
55 Fenmar Dr.
Weton, Ontario

Rec'd-DCU-DOE

MAR 28 1996

Regu-UCM-MDE

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THE MINISTER
Mar 22 4 47 PM '96

WOMEN'S NETWORK ON HEALTH & THE ENVIRONMENT

736 BATHURST STREET, TORONTO ON M5S 2R4
416-516-2600 • 416-531-6214 (FAX)

March 22, 1996

The Honourable Sergio Marchi
Minister of the Environment,
10 Wellington Street
Hull PQ K1A 0A2
via fax 819-953-3457

39037

6-1025-1
②-1165-36/5157

Dear Minister Marchi:

Re Canadian Environmental Protection Act (CEPA) Review

What is going on in Ottawa? You and your Liberal colleagues seem to be abdicationing responsibility for environmental protection in Canada!

Just as more and more evidence linking human health to environmental degradation is making its way into the news (escalating cancers including a now epidemic breast cancer rate, reproductive failures, reduced immunity, crashing sperm counts, and so on. For more information, please see Dr. Theo Colborn's new book, "Our Stolen Future") with all the attendant costs to our already beleaguered health care system, the government has - in key areas - pulled the rug from under the excellent report, "It's About Our Health! Toward Pollution Prevention."

All Canadians have a right to clean air, water, soil and food. We need you - and will fully support you - in taking a strong leadership role in environmental protection by setting strong environmental standards. Industry and agriculture must come to realize that it's even in their own best interests to reduce and phase out the production use and disposal of persistent toxic chemicals.

Clean production and sustainable agriculture will come sooner or later (although Rachel Carson must regularly roll over in her grave considering it's now almost 35 years since the alarm was sounded. Those of us still alive since "Silent Spring" was published in 1962 are also very tired of waiting.). You can play a critical role in making a healthy environment possible sooner, although much time has already been lost.

- We do need an Environmental Bill of Rights, including the right to intervene when the environment is being degraded, and the right to sue polluters who break the law.

Environment Minister Sergio Marchi/2

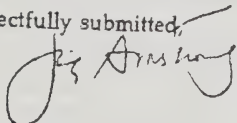
- We do need a comprehensive public access to information law that gives us the right to know who is releasing toxic pollutants into the environment and what they are, including all substances sent off-site for recycling or incineration.

- We do need to protect our health and the environment through government regulation of biotechnology administered by Health Canada and Environment Canada. A section in CEPA is badly needed applying to all biotechnology products which may enter the environment.

Our organization, which represents more than 1500 individual women and groups concerned about health and the environment, believes deeply in "action for prevention." A strong CEPA is a very important step in ensuring the health and well-being of all Canadians.

We look forward to your own strong "action for prevention" with respect to CEPA, and to meeting to discuss this critical issue with you and your staff.

Respectfully submitted,



Liz Armstrong

on behalf of the Women's Network on Health & the Environment

Home address: RR#2, Erin ON N0B 1T0 • 519-833-7202 • 519-833-7203 (fax)

cc Prime Minister Jean Chrétien

Brenda Chamberlain, MP, Guelph-Wellington



THE WEED FOUNDATION

Rec'd-DCU-DOE

MAR 26 1996

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1996 03 21

Sergio Marchi
Minister of the Environment
House of Commons
Ottawa, Ontario
K1A 0A6

139049

0-1025-1
0-1165-36/5157

Re: *Recommendations for the Primary Prevention of Cancer* submitted for Canadian Environmental Protection Act review.

The Women's Network on Health & Environment is a grassroots network of groups and individuals who support action for prevention of health effects caused or worsened by environmental contamination.

Enclosed you will find a copy of the report of the Ontario Task Force on the Primary Prevention of Cancer's March 1995 report entitled *Recommendations for the Primary Prevention of Cancer* for your consideration when reviewing the Canadian Environmental Protection Act. Also enclosed is a recent copy of our newsletter and information on our network.

Thank you,

Sharyn Inward
Women's Network on Health & Environment
A Project of the WEED Foundation

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MAR 25 1996

Requ-UCM-MDE



WWF World Wildlife Fund
Fonds mondial pour la nature

March 21, 1996

The Honourable Sergio Marchi
Minister of Environment
and

The Honourable David Dingwall
Minister of Health
House of Commons
Ottawa, Canada

Rec'd-DCU-DOE

APR 2 1996

Requ-UCM-MDE

Canada

90 Eglinton Avenue E., Suite 504
Toronto, Ontario M4P 2Z7
Telephone: (416) 489-8800
Facsimile: (416) 489-3611

0-1025-31

139273

Re: The Canadian Environmental Protection Act (CEPA)

Dear Minister Marchi and Minister Dingwall:

World Wildlife Fund (WWF) made a deputation to the Standing Committee on Environmental and Sustainable Development when it was reviewing the Canadian Environmental Protection Act. We focused on aspects pertaining to the management of chemicals, which we feel is the role of CEPA. The recommendations of the Standing Committee showed great insight into both some of the failings of CEPA to date, and some of the ways to move forward. While it is understandable that the government would not adopt each and every one of the Committee's recommendations, the Government's response does not adequately redress some of the flaws which limit the ability of the Ministers of Health and Environment to manage toxic chemicals.

As background to our comments on the Government's response, it is essential to understand that both environmental science and approaches to environmental management have taken big strides since CEPA was formulated and passed (1986-88). In particular, on the science side, concerns regarding the ability of environmental pollutants to disrupt the endocrine system, even at very low levels, was not even hypothesized. The mounting evidence turns many of the conventional assumptions about risk and how to manage chemicals on its ear.

No longer can we assume that even modern testing is going to tell us about endocrine disrupting potential. Because a single 'hit' at the right (or wrong) time can have permanent results for the offspring, we cannot assume that reducing exposures by reducing levels offers protection. Evidence that chemicals in combination can add up to an active dose leaves little confidence in the chemical-by-chemical assessment and control approach. And the potential to disrupt the endocrine system is not limited to persistence and bioaccumulative substances, although the list of substances considered to be endocrine disruptors includes some of the most persistent and bioaccumulative chemicals known.



On the management side, there is increasing experience with toxic use reduction and pollution prevention throughout the industrialized world. Extensive pollution prevention planning has been triggered both by recognition that production can be cleaner and more efficient and by requirements to eliminate specific toxic threats.

In these contexts, the precautionary approach and pollution prevention have an even more important, if not essential, role. We simply do not have any confidence that, for many substances, any level of pollution control will be effective. Nor do we have any sense of just how many substances, or combinations of substances, may prove to be endocrine disruptors once concerted testing is started. Our legislation has to be both proactive and flexible enough to react to significant concerns.

The Government's emphasis on the precautionary principle and pollution prevention is commendable, but overly limited in its application. On the other hand, the qualifiers, deferral to other parties (provincial governments, industry) seriously undermine the effectiveness of potential reforms, and are too widely applied. Some specific comments follow.

It is indicated that persistence and bioaccumulation are to be the basis for deeming substances toxic without PSL assessment, ie: inherent toxicity. We strongly support the need to kick-start a phase out, but would argue that additional criteria are needed, including potential for endocrine disruption. CEPA has always espoused protection of both the environment and human health, and we certainly object to narrowing the process of selection of substances to "potential human exposure".

In order for it to be effective, requirements for pollution prevention planning must be comprehensively applied; there is a vast difference between enabling the Minister to require the preparation of pollution prevention plans, and requiring them. All enterprises manufacturing, using or emitting substances deemed toxic must be subject to the same requirements. It has been clearly demonstrated that support for pollution prevention cannot be ad hoc – a clearinghouse will be of little benefit unless it is backed with extension and research & development paid for by the users themselves. CEPA should allow for the levy of a fee, charged based on use and emission of toxic substances will provide a (declining) source of funding for pollution prevention support.

As Environment Canada will have heard before, there are concerns with the approach and definitions espoused under the Toxic Substances Management Policy (TSMP). In particular, the definition of "virtual elimination" which allows for emissions as long as they aren't measurable, backtracking on the concept of pollution prevention being advanced as an operating principle. Embedding the TSMP in CEPA, therefore, is not desirable.

Enshrining the now-voluntary National Pollutants Release Inventory is an important measure which we fully support. In particular we are pleased that there is a commitment to ensuring the inventory captures use, transfer, and emission information, plus information about pollution prevention planning and implementation. We would also urge you to keep in mind the recently approved OECD Guidance to Governments on Pollutant Release and Transfer Registries and the US TRI. With an improved reporting scheme, the task of levying fees to support pollution prevention becomes straightforward and fair.

It is our view that voluntary approaches to environmental protection are an extra-legislative matter, and should not be formally part of CEPA -- legislation is intended for use by governments to set out requirements and timetables. However, if the authority to enter into agreements is to be set out in legislation, it should be accompanied by specific criteria as to when this is appropriate, what public involvement and scrutiny is required, and how 'non-compliance' will be remediated through legislative/regulatory mechanisms.

The abdication of federal responsibility for international air pollution, which would leave the setting of emission targets and timetables to the level of government in which the domestic source 'resides' is rather startling. Similarly, the Government's response in the realm of biotechnology, which would defer control to other agencies who may not currently even have controls in place, is unacceptable. We would urge you to clearly define the federal role in remediating and eliminating international air pollution problems, and in regulating products of biotechnology.

In summary, we feel strongly that Canada's key piece of environmental legislation is at a cross-roads. Your decisions will influence for many years whether government, industry, and Canadians are challenged to, and able to, significantly reduce the threat to health and the environment posed by toxic chemicals. As written, and as the Government Response would re-write CEPA, you would simply have neither the leadership nor tools to address either the threats we understand nor the ones which are looming. We trust that you will take this opportunity to give yourselves, future Ministers of Health and Environment, Canadians, and industry the guidance and ability to continuously improve the health of Canada's population and environment.

Please do not hesitate to call on World Wildlife Fund towards this end. I look forward to your response.

Sincerely,



Julia Langer

Director, Wildlife Toxicology Program

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION



Name: Jennifer Young (Jennifer Young)

Address: RR#5

Kingston Nova Scotia

BOP IRO

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Raelene Young (RAELENE YOUNG)

Address: 40 a Valley Rd

CORNER BROOK, NF

A3H 5B1



Renewable Resources

Box 2703, Whitehorse, Yukon Y1A 2C6

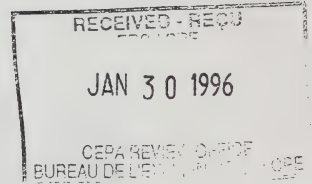
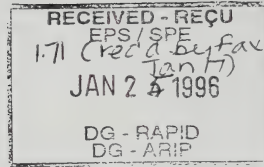
January 17th, 1997

back to the future

Mr. Ed Norena
Director General
Regulatory Affairs and Program Integration
Environmental Protection Service
Environment Canada
351 St. Joseph Blvd., 11th Floor
Hull, Quebec
K1A 0H3

Our File:

Your File:



Dear Mr. Norena:

We have reviewed the document entitled "CEPA Review: The Government Response", and have the following summary and background notes to put forward:

Summary

In general we are supportive of the Government's response. However, we have specific concerns with Chapter 10 "Government Operations, Federal Lands and Aboriginal Lands". Chapter 10 states that provincial regulations do not apply to federal lands. Approximately 90% of the Yukon is federally administered land. Under our Environment Act we are developing regulations to fill regulatory gaps **not** presently occupied by the federal government. An example is Pesticide Use for which we have developed a regulation. We believe that this regulation applies throughout the Yukon. In fact there is no other law to regulate the use of Pesticides. Legal opinion and precedent support our contention that where the federal government is not occupying the legal field we can.

Federal transfers of responsibility in the areas of forestry, oil and gas, minerals, water resources and land administration are well underway or beginning. While the Yukon will be given administration and control for land and resources the ultimate ownership will remain with the federal government. The Yukon Government will have to develop new resource laws involving consultation and stakeholder participation. Any move by Environment Canada to duplicate Yukon laws under a renewed CEPA Part IV will result in a significant and confusing intrusion into our affairs.



KLONDIKE
GOLD RUSH
CENTENNIAL

It is also worth pointing out that Yukon First Nation Settlement lands are intended to be mostly fee simple lands and First Nations will hold title. The Yukon land claim involves approximately 40,000 square kilometres. A recognition of this seems to be missing in your definition of "Aboriginal Lands".

Background

Chapter 10 of the Government Response seems to be moving toward a significant duplication of effort and law in the Yukon under a renewed CEPA.

The majority of lands in the Yukon are administered by the Federal Government under a variety of legislation. While a number of these federal laws provide for environmental protection some do not. Under the Environment Act (Yukon) regulations have been (and are being) developed in areas where gaps exist. Examples include:

- Pesticide Use
- Ozone Depleting Substance Use
- Fuel and Hazardous Substance Storage and Handling
- Spills occurring where federal enactment's do not apply.

Prior to developing an Environment Act, we sought legal advice concerning our authority to enact environmental laws. Our understanding is that our laws are valid throughout the Yukon where the federal government is not occupying the field. The advice we received was supported by legal precedent regarding applicability of provincial laws on federal lands.

Chapter 10 of "The Government Response" appears to advocate enacting separate laws on federal lands on the premise that provincial (territorial) laws do not apply. The Yukon Government has spent significant amounts of money on the development of environmental law and the associated consultation with new regulations now underway. The potential for overlap, duplication and confusion is significant.

In addition, the Minister in charge of the Department of Indian Affairs and Northern Development (DIAND) has indicated a strong desire to transfer administration and control in a number of areas to the Yukon Government over the next few years.

While this will provide us with provincial-like responsibilities, land ownership will remain with the federal government. Following transfers of forestry, oil and gas, minerals, lands and water resources updated resource laws in these areas will be necessary in addition to the more specific regulations under our Environment Act.

It appears that one federal department (DIAND) will be transferring administration and control of resource and environmental law while a second federal department (EnvCan) will be taking back responsibility and increasing its presence significantly. Duplication, overlap and confusion will result. In a developing region such as ours this will create a hindrance to industrial development.

In addition to potential overlapping laws to protect the environment, there seems to be some confusion regarding First Nation Lands in the Yukon. We have five or so small Indian Act Reserves. In addition, approximately 40,000 square kilometres will be transferred to Yukon First Nations. Lands transferred to Yukon First Nations will be fee simple with the title registered in the Land Titles Office in the name of the First Nation. The definition of "Aboriginal Lands" in "The Government Response" does not appear to include lands where the title is registered in the name of the First Nation. It is then assumed that a renewed CEPA would be considered a law of general application as referred to in the Land Claim Settlement Legislation.

A handwritten signature in dark ink, appearing to read 'Joe Ballantyne', with a long horizontal stroke extending to the right.

Joe Ballantyne
Director

Environmental Protection & Assessment Branch.

DEAR HONOURABLE SERGIO MARCHI

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

Rec'd-DCU-DOE

MAR 25 1996

Regu-UCM-MDE



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name:

Joyce Zinck ✓

Address:

P.O. Box 1375

Greenwood N.S. BOPINO

RECEIVED
MINISTER OF
ENVIRONMENT

Lesli Bisgould, Barrister & Solicitor

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139026

March 22, 1996

The Honourable Sergio Marchi
Minister of the Environment

OCU-DOE

1996

sent via fax only to 819-953-3457

Regu-UCM-MDE

0-1025-1

2-4059-1

Dear Minister Marchi,

Re: The Canadian Environmental Protection Act and Biotechnology

I am a director of Zoocheck Canada, a national charitable organization whose mandate includes the protection of wildlife in captivity and in the wild. I am writing on Zoocheck's behalf to express our concern regarding the government's proposals set out in its December 1995 response to the House of Commons Standing Committee on Environment and Sustainable Development report of June 1995.

It is Zoocheck's respectful submission that this proposal should be rejected as implementation will put the Canadian environment, and the health and safety of its citizens, at risk.

The proposal is entirely inconsistent with the spirit behind the Standing Committee's recommendations. It would significantly weaken the Act's existing provisions which address biotechnology, and would, inter alia, eliminate the minimum standards for notification and assessment of toxicity for all products of biotechnology.

It would not be difficult to implement the intent behind the Standing Committee's recommendations. A new part under CEPA dealing specifically with biotechnology would have to be established. That part, to be effective, would have to apply to all products of biotechnology which might enter the environment, and would have to include those products which the government currently proposes to regulate under other Acts, (i.e. the *Fertilizers Act*, the *Pest Control Products Act* and the *Seeds Act*).

The new part under the Act would have to establish requirements for the assessment of biotechnology products in terms of their potential immediate or long-term, direct or indirect effects on human life and health, the environment and specifically biodiversity, including cumulative impacts; potential effectiveness of the products for their intended purposes; and, the availability of alternative means of achieving products which present lower potential for harm to the environment and to human health.

.../2

The new part ought further to provide for public participation in decision-making regarding biotechnology, including public notice of major decisions regarding biotechnology products; public notice of proposed field tests of biotechnology products; opportunities to appeal government decisions regarding biotechnology products, including the approval of field tests; and, enhanced access to information regarding products of biotechnology.

Further, the new part should include provision for full cost recovery, a user-pay system for approvals of biotechnology products, as well as establish a database of environmental releases of products of biotechnology in Canada.

The changes requested above constitute one small step that the federal government should be taking in furtherance of its obligation to protect the environment and all of its inhabitants. Zoocheck is hopeful the Ministry of Environment will take a leadership role in environmental protection by setting strong environmental standards in the field of biotechnology and elsewhere.

Yours very truly,



Lesli Bisgould
Director
Zoocheck Canada

